





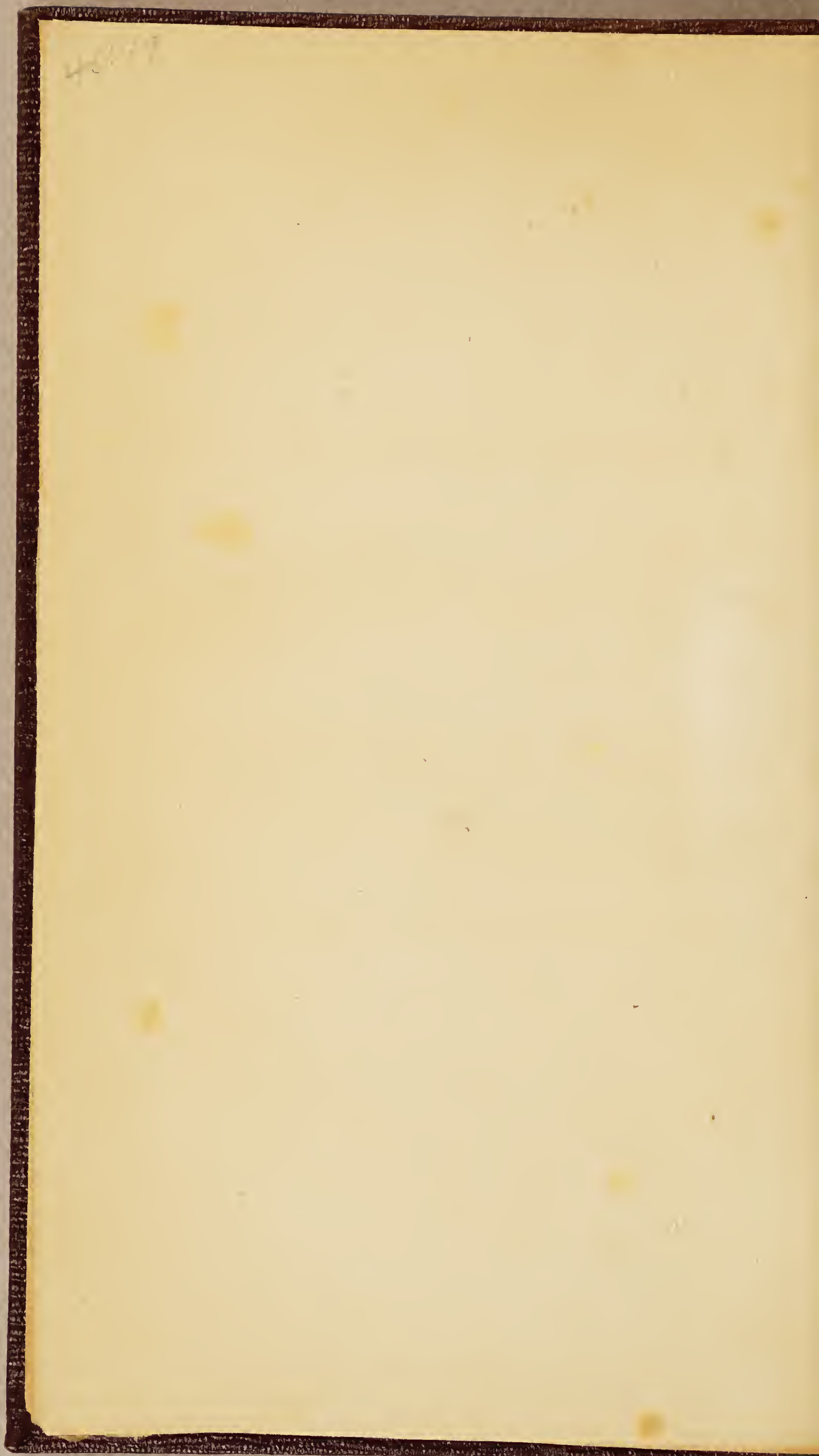
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John Carter Brown.

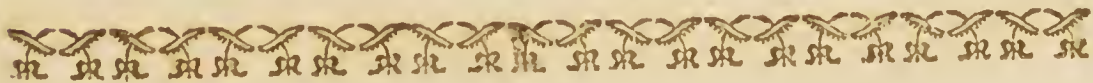








MR. VAUGHAN'S  
Appeal to the Public.





1891



A N  
A P P E A L  
T O T H E  
P U B L I C

ON BEHALF OF  
SAMUEL VAUGHAN, Esq;  
I N

A full and impartial Narrative of his Negotiation

W I T H  
THE DUKE OF GRAFTON.

C O N T A I N I N G,

The several AFFIDAVITS, LETTERS, &c. of the DUKE  
of GRAFTON, and Others, as filed in the Court of  
King's Bench, *Michaelmas* Term, 1769; and the  
different PLEADINGS and SPEECHES on the Case.

Together with an ACCOUNT of various Transactions  
before and since the Rule was made absolute.

And an A P P E N D I X

Relating to the Public Offices in the Island of JAMAICA.

---

*What stronger Breast-plate than a Heart untainted?  
Thrice is he arm'd, who hath his Quarrel just;  
And he but naked, though lock'd up in Steel,  
Whose Conscience with Injustice is corrupted.*

---

L O N D O N:  
Printed for E. and C. DILLY, in the POULTRY.  
MDCCLXX.



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JOHN CARTER BROWN.

## P R E F A C E.

WHEN a man is accused of any crime whatever, reason, equity, and justice demand, that he should be heard, before he is condemned, or even censured: a favour, a claim, which the public cannot refuse to Mr. Vaughan, who hath been pursued and prosecuted on a question, the like of which was never before agitated in a court of law.

This publication hath been hitherto delayed to avoid the charge of "A design to bias the jury;" but as the information was filed, and issue delivered, the last term, without any notice or suggestion of trial, the obstruction is now entirely removed, and Mr. Vaughan is happy, being at full liberty to discharge his promise.

The atrocious crime alledged against him, is, "An attempt to corrupt a prime minister." An offence, doubtless, of the most pernicious nature. Therefore, no wonder, if besides being the subject of constant abuse from the venal votaries of a party, he should also have incurred the displeasure of the real friends of the constitution, who were strangers to his case.



However, though he could not but feel as a man, yet, the observing his countrymen to express such resentment against a person so accused, afforded him a secret, unspeakable pleasure; regarding it as a certain proof, that there still remains a considerable share of public spirit, and national virtue.

Mincing-lane, Feb. 13,  
1770.

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# ERRATA.

Page Line

- 31 - 28 after *per annum*, dele *of*.
- 39 - the last line of note after || put *but were the*.
- 44 - 15 after *testimony of*, instead of persons, say *the assembly of*.
- 47 - 4 lines from the bottom, instead of *Mr.* read *Messrs.*
- 48 - 18 after *it had been*, say † *mortgaged*, in a note.
- 56 - 26 instead of *conceal*, read *conceed to*.
- 73 - 2 of the note, after *mentioned and*, read *the fact*.
- 73 - 3 of the note, after *that to*, read *his*.
- 81 - 5 read and *that there never will be another*.
- 90 - 12 after *ment*, read *is*.

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## S T A T E, &c.----

*The following Affidavits and Exhibits, filed Michaelmas Term, 1769, are taken from the Office Copies.*

In the King's Bench.

AUGUSTUS HENRY, Duke of Grafton, maketh oath, "That on or about the *tenth* day of June last, he received inclosed in a cover or covers, directed to this deponent, the three several papers or writings hereunto annexed, severally marked with the letters A, B, and C, respectively. The said paper marked A, purporting to be a letter, dated Mincing-Lane, 10 June, 1769, from Samuel Vaughan to this deponent; the said other paper marked with the letter B, purporting to be an affidavit made by Samuel Vaughan, of London, merchant, on the 23d of March 1769, before Samuel Turner, esq; then lord mayor of the city of London; and the said paper writing marked with the letter C, purporting to be a case relating to the clerk of the court's office in the island of Jamaica. And which said three several papers so inclosed in the said cover or covers, and directed to this deponent as aforesaid, were, as this deponent has been informed and believes, on or about the said *tenth* day of *June*, brought to this deponent's house in Arlington-street, in the parish of St. James's, \* within the liberty of Westminster, in the county of *Middlesex*, by some person unknown to this deponent, and left with

\* The duke of Grafton, on the 10th of August, told Mr. Newcome, in the presence of Mr. Grey Cowper, that he received Mr. Vaughan's letter, affidavit, &c. in the country, there read them, and then brought them to town to take his friends opinion.



this deponent's porter, or some of his servants there. \* And this deponent saith, that the said cover or covers, in which the said three other papers were inclosed, are lost or mislaid, so as that this deponent cannot find the same, nor does he know where the same are. And this deponent further saith, that he is informed, and believes, that the said paper writing marked with the letter (A) and the name Samuel Vaughan subscribed thereto, and the address or direction to this deponent set at the foot thereof, is all of the hand writing of Samuel Vaughan, of Mincing-lane, London, merchant. And this deponent further saith, that he is informed and believes, that the said paper or writing, marked with the letter B, purporting to be an affidavit, as aforesaid; and likewise the N. B. or words wrote underneath the same, are all of the hand writing of the said Samuel Vaughan, of Mincing-lane, London, merchant, except the name or words

\* Mr. Vaughan (June the *tenth*), at the time when he determined upon an immediate application to the duke himself, read the following article of news in the Public Advertiser; "Yesterday his grace the duke of Grafton, set out from his house in Arlington-street, St. James's, for Grafton, his seat in Northamptonshire." Mr. Vaughan, however, to know more certainly where the duke was, went that morning to his house, and was informed by the porter, that his grace was gone to Wakefield-lodge in Northamptonshire; and upon enquiring, whether the duke would stay there a sufficient time to receive a letter by the post, was answered in the affirmative. Mr. Vaughan, on his return home, immediately wrote the letter marked A, and inclosing it in a cover, together with the papers marked B and C, directed it *To his grace the duke of Grafton, at Wakefield-Lodge, Northamptonshire.* Mr. George Rush, who happened that afternoon to be at Mr. Vaughan's house, was requested to put the letter in the Post-office in Lombard-street, as he went home; which was accordingly done. Three days after this, Mr. Rush went into Devonshire, and from thence he is certain of the day of the month.—The *fourteenth* of June the following paragraph appeared in the Daily Advertiser; "Yesterday his grace the duke of Grafton arrived in town, from his seat at Whittleburgh Forest, in Northamptonshire, and attended the levee, and afterwards the council held at St. James's." The next morning Mr. Vaughan was informed by the duke's porter, that his grace was come to town.—Hence it may be supposed, that, in this respect, the *noble* duke's memory greatly failed him; and perhaps in the first oath his grace had ever taken, excepting that of supremacy and allegiance; and it may be observed, as the letter went from the Post-office in the city, that the case ought to be tried in the city of London, and not in Westminster-hall.

[ Samuel



[Samuel Turner, mayor] set or subscribed to the jurat of the said affidavit, which this deponent is informed and believes, are of the hand writing of the said Samuel Turner, then lord mayor of the city of London. And this deponent saith, he is informed and believes, that the words indorsed on the said paper or writing marked (C,) that is to say [Case to be perused at leisure] are of the proper hand writing of the said Samuel Vaughan, of Mincing-lane, London, merchant; but the body of the said paper or writing marked (C,) is of the hand writing of some other person, as this deponent believes, who is unknown to this deponent. And this deponent further saith, that at the time this deponent received the said several paper writings hereunto annexed, as aforesaid, and before, he, this deponent, was, and still is, one of his majesty's most honourable privy council, and also the first commissioner named in, and appointed by his majesty's commission under the great seal of Great-Britain, for executing the office of treasurer of his majesty's exchequer. And this deponent further saith, that by the words [Clerk of the court's office in the island of Jamaica] mentioned and contained in the said paper marked with the letter (B,) and also by the words [To clerk of the supreme court in the island of Jamaica] wrote at the foot of the same paper, was, and is meant and intended, The office of chief clerk to attend the supreme court residing in the town of St. Jago de la Vega, otherwise Vaga; within his majesty's island of Jamaica in America, as this deponent apprehends and verily believes; and which office, as this deponent is informed and believes, is, and hath been granted by the crown, by letters patent under the seal of Great-Britain; and is an office of a public nature and trust, and of considerable profit, and concerns the administration and execution of justice in the said island of Jamaica. And this deponent further saith, that he verily believes the said letter and affidavit, were written and sent to this deponent by the said Samuel Vaughan, with a view to tempt and corrupt this deponent for a gift or reward of five thousand pounds, to procure his majesty to grant the aforesaid office in the manner mentioned in the aforesaid affidavit. And this deponent further saith, that he hath been informed by Mr. Henry Newcome, of Hackney, in the county of



Middlesex, that the said Samuel Vaughan had applied to him, to convey a proposal to the effect contained in the said affidavit, to this deponent; which the said Mr. Newcome had refused to do; and which information this deponent believes to be true. And this deponent saith he hath lately caused an application to be made to the said Henry Newcome, to make an affidavit of what he knew relative to the above matter, who returned for answer, that he had rather appear in court, and give an account, *viva voce*, of what he knows relative to the affair \*, than give an affidavit, or to that effect, as this deponent has been credibly informed, and verily believes."

GRAFTON,

Sworn this 16th day of Nov. 1769,  
at my house in Lincoln's-Inn Fields,  
before me, E. WILLES.

---

## LETTER A.

My Lord Duke,

MR. Henry Newcome's strict honor, as well as his very sincere regard for your grace, rendered him (in my opinion) the properest person to intrust with a proposi-

\* The 14th of November, Mr. Newcome's usher came to Mr. Vaughan, acquainting him, "that the duke of Grafton had that afternoon sent to know, whether Mr. Newcome would have any objection to be examined by council; to which he answered, that he should not." Mr. Vaughan thanked him for the information, saying, that he had no objection to Mr. Newcome's giving evidence before trial; in which case, the sooner it was done, the better.—The 16th of November, Mr. Vaughan sent his son to Mr. Newcome, to know if he had been examined; if not, to request that there might be no delay. Mr. Newcome, after a good deal of hesitation, said, "that no person had been *there* to examine him."—The next day, about three o'clock, he called upon Mr. Vaughan, and said, that, "he had received three messages from the duke of Grafton, by two of his secretaries, one of whom came twice within the space of four hours; and, that he had at length determined to give his evidence in court."



sion that required the utmost secrecy; but his delicacy preventing, I am (by the nature of it) precluded from every other method, but by immediate application to your grace; in which I am confirmed by Mr. Howell's applying again yesterday to purchase a resignation of the patentee, who is my friend.

The inclosed affidavit will shew the proposal, which will be increased, if necessary; and, would your grace indulge me by perusing the case, I trust it would appear, that *I have a pretension in preference to any other.*

I will take an opportunity of waiting upon your grace, hoping the honor of a conference, otherwise, to receive back the affidavit, in order to destroy the same. I am,

Your grace's most obedient

and most humble servant,

SAM<sup>L</sup> VAUGHAN.

Mincing-lane, 10th June, 1769.

His grace the duke of Grafton.

## A F F I D A V I T    B.

London, ff.

“ THIS day appeared before me, Samuel Vaughan, of London, merchant, and made oath upon the holy Evangelist, that he being informed that Mr. ——— Howell had said, that he either expected, or was promised the reversion of the clerk of the court's office, in the island of Jamaica; and as he (this deponent) apprehends that he has some degree of merit in what he has already done to promote *public security* of property, by the regular recording judgements, &c. and in properly *conducting* the said *office*; and that, as his own interest renders necessary the continuing the same regularity; therefore he, this deponent, doth hereby voluntarily promise and engage, that in case the reversion of the said office shall be made and procured for the natural lives of his three sons, Benjamin, William, and John Vaughan, of Mincing-lane, or for the lives of three other persons to be nominated by him, (which ever shall

be



be proposed,) \* upon the same conditions as are mentioned in the last patent for that office; that then he, (this deponent) will, upon the said patent being delivered to him, pay into the hands of Mr. Henry Newcome, or to his order, five thousand pounds, lawful money of Great-Britain, to be paid to the person or persons who procures the said patent; or, if required, lodge security in the hands of the said Mr. Henry Newcome, for the payment of the said sum of five thousand pounds sterling, so soon as the said patent is made out, and delivered to him, this deponent. And this deponent further saith, that he never hath, directly or indirectly, mentioned or given the least intimation of his intention, design, or proposition touching this matter, to any person or persons, except to the said Mr. Henry Newcome. And this deponent further saith, that whether this proposition should be approved, accepted, and be efficacious, or otherwise rejected, that in either case he (this deponent) will never at any time or times divulge, mention, or give intimation, offer, proposition, or agreement relative to this matter, to any person or persons whatsoever, except the said Mr. Henry Newcome; and further this deponent saith not."

SAM<sup>L</sup> VAUGHAN.

Sworn at the Mansion-house  
in London, this 23 March,

1769, before me, SAM<sup>L</sup> TURNER, Mayor.

N. B. Mr. Abraham Farley has two patents, *viz.* for clerk of the crown and clerk of the peace in the island of Jamaica: so † clerk of the supreme court in the island of Jamaica. And it is the last that Mr. Vaughan is particularly desirous to obtain.

\* This provision was made to prevent the name of "Vaughan" from appearing in the patent; as from the part Mr. Vaughan had taken in public affairs, the world might have imagined that not merit, but money *only*, had procured the grant.

† The omission of the "r" in this place, and of the letter "d," before John, in p. 5, l. 3, from the bottom, shews that this affidavit was written hastily.



## CASE AND REPORT C.

CASE (*endorfed*) to be perused at leisure.

The clerk of the court's office in the island of Jamaica, is an office of record, where all processes are returnable by the provost marshal every three months; upon the due recording whereof the absolute security of property immediately depends.

MR. Vaughan resided in Jamaica from 1736 to 1752, during which time the returns were not regularly recorded, but in general, the judgements and other returns only kept in small holes, alphabetically digested; by which means many were taken away by the attornies and lost, and he, as well as many others, became very considerable sufferers. For remedying whereof, in 1762, Mr. Vaughan recommended it to John Evans, (a person fully qualified for the office,) to apply to the patentees for the appointment; who, on Mr. Vaughan's giving security for payment of four hundred guineas *per annum*, and the faithful discharge of the trust, was thereupon appointed deputy; during whose life, clerks were constantly employed in recording the judgements, &c. And a committee being appointed by the assembly to examine into the state of the public offices, reported their approbation of the method and regular proceedings of that office; as by the said report, and a letter from George Ramsay, esq; register in chancery \*, will more fully appear.

Upon the death of Mr. Evans (who was also Mr. Vaughan's Attorney) in 1765, Mr. Vaughan, having procured a deputation on like terms, in his own name, and others nominated by him, went to Jamaica, on purpose to appoint proper deputies, to put the office on a secure and respectable footing. He accordingly appointed Cheney Hamilton, and Thomas Atkins, esqrs;

\* This letter was not sent to the duke, as intended, general Conway not having returned it with the papers mentioned in page 19.



persons of known reputation, his deputies; who have given him five thousand pounds security, not to engage in any other business whatsoever, to constantly attend the office, and to keep all the returns duly recorded; which hath been punctually complied with.

Mr. Vaughan hath a very considerable property in the island, both real and personal; therefore, it is his interest to have the returns duly recorded; and it is a trust of such importance, as should be committed to such only, as are immediately concerned in preserving the regular security of property therein. Four clerks are employed, and at times supernumeraries, in regularly entering up the judgements; and Mr. Vaughan hopes some merit may be ascribed to him, for having so regularly conducted that office since it was under his direction; and which never before was done, by any former clerk of the court.

The clerk of the court's office gives great weight and hath influence over the attornies and deputy-marshals. Mr. Vaughan having 86,000*l.* \* sterling owing him in Jamaica, the holding that office is abundantly more important to him, than any other person not so circumstanced, in order to recover his debts in that island.

## THE REPORT.

*Martis 8 die, Novembris, 1763.*

Mr. Speaker,

YOUR committee appointed to inspect the public offices, having visited the clerk of the supreme court of judicature, find the several books and papers following required to be transcribed and repaired, *viz.* Lib. I, &c. &c. &c.

\* The sum was here specified to shew, that Mr. Vaughan's being so essentially interested in having the judgements duly recorded, was the best security to the public, for the faithful discharge of the office. For it was a necessary consequence, that all judgements in the initial letters preceding the letter V, in each court, must be recorded before his own, in the manner they were obtained, as will appear by the note in page 74.—The sum, however, would by no means have been mentioned in this publication, had it not been thought proper, to give an exact account, even of the minutest part of the proceedings.

It



It appeared to your committee, that all the judgements of 1747, part of those of February 1748, part of May 1749, all August, November, and February 1749, all the years 1750 and 1751, those of February, May, and August 1752; all which judgements were obtained in the time of William Lindsay, esq; clerk of the court, are yet unrecorded.

That 6971 judgements, obtained between August grand court, 1753, and August 1756, inclusive, when Mr. Bontein entered upon the office, are likewise unrecorded. These judgements were obtained in the time of Joseph Richardson, esq; clerk of the court, &c. &c.

That Thomas Bontein, esq; the late clerk of the court, has entered up the judgements obtained in his time to November court, 1762; and that he has now three clerks employed in bringing up the remainder of the said records obtained in his time.

It appeared to your committee, that many judgements in May grand court, 1763, during Mr. Bontein's time, are lost or mislaid out of the office; and that the plaintiffs in such judgements cannot, by reason of the same, obtain executions, so that they are not enabled to get at their money. And it further appeared to them, that one of the plaintiffs, who had obtained many judgements in that court, came from the country on purpose to search for the same, but could not find the same in the office. That the plaintiff afterwards went to one Thomas William Bailey, who had been a recording clerk to the said Mr. Bontein, and after some time, he got from the said Bailey many of his judgements; but that many others are still missing.

That your committee find it has been a most pernicious custom, which prevailed in the time of the said Mr. Bontein, to permit and suffer the several attornies of the supreme court of judicature to remove the records and original writs belonging to the said court, from the said office to their several places of abode; whereby many of the suitors have been sufferers.

That John Evans, esq; the present clerk of the court, on the 12th of August 1763, (which was very soon after he came into the said office,) publicly advertised, that such a practice as aforesaid had prevailed, and that he did thereby forbid any attempts of the like nature for



the future ; and at the same time requested, that those who were possessed of such records and original writs, would forthwith send the same to be lodged in the said office.

That, upon this advertisement, many of the attornies brought and sent into the said office a great number of such records and original writs ; and the present clerk of the court assured your committee, he never permitted any of the records or original papers in his office to be taken away by the attornies, or any other person whatsoever, neither will he permit the same to be done.

The present clerk of the court is recording the judgments obtained in August grand court, 1763, being the first court of his entering into the said office.

Resolved that the house do agree to the said report \*.

### In the King's Bench.

SAMUEL BALDWIN, † of Fulham, in the county of Middlesex, gentleman, &c. &c.

Sworn at my chambers in  
Serjeant's-inn, the 16th  
Nov. 1769, before me,  
E. WILLES.

N. B. This affidavit only proves the hand writing of Samuel Vaughan, of Mincing-lane, London, merchant.

### In the King's Bench.

RICHARD REYNELL, of the parish of St. George, Hanover-square, in the county of Middlesex, esq; maketh oath and faith, “ That he resided in the island of Jamaica, in America, several years, (that is to say, from the year one thousand seven hundred and sixty-five, to

\* Only those three papers, A, B, C, were sent by Mr. Vaughan to the duke of Grafton.

† The 8th of November, Mr. Baldwin came to Mr. Vaughan, to inform him, that Mr. Sharp had been with him, to desire he would prove Mr. Vaughan's hand writing ; and that he had returned for answer, that he should be sorry to make oath *ex officio*, without that gentleman's approbation. Mr. Vaughan said, he was ready to acknowledge it himself ; but should that be insufficient, desired he would do it, and that without loss of time.



the month of April now last past;) part of which time this deponent was secretary to governor Littelton, and afterwards to governor Elletson, and for some short space of time was appointed by governor Littelton to the office of chief clerk to attend the supreme court residing in the town of St. Jago de la Vega, otherwise Vaga, within his majesty's island of Jamaica, on a vacancy having happened in that office; and which this deponent executed by deputy. And this deponent, by such his residence and station in the said island, became acquainted with the said supreme court, and the said office of chief clerk. And this deponent saith, that the said supreme court is a court of law, in which justice is administered touching matters of property in the said island, also in matters of revenue, and likewise in matters of a criminal nature, like unto the courts of King's Bench, Common Pleas, and Exchequer at Westminster-hall in England; there not being such three different courts in Jamaica: but the said supreme court administers justice in Jamaica, in such matters as is usually administered in all the said three other courts in England; and besides which, there is also a court of chancery in Jamaica. And this deponent saith, that the duty and business of the said chief clerk, is to attend the said supreme court, to take minutes of their proceedings and orders, and make entries thereof on the records of the court; and, as the deponent believes, to tax the costs of the suitors of the said court, to sign the judgements given by the court, and to keep the records thereof, and to do other matters usually done by chief clerks of courts, according to the best of this deponent's knowledge, observation and belief: and the said office of chief clerk of the said supreme court is an office of a public nature and trust, and of very considerable profit"

RICHARD REYNELL.

Sworn at the King's Bench  
Treasury Chambers at  
Westminster, the 20th  
day of November, 1769,  
before R. ASTON.



## In the King's Bench.

WILLIAM POLLOCK, of the parish of St. Margaret, Westminster, in the county of Middlesex, esq; maketh oath and faith, " That he is first clerk in the secretary of state's office for the colonies, and has been a clerk in the secretary of state's office for several years last past, and is thereby acquainted with the manner and course of issuing and making out grants from the crown of offices and places in the colonies in America, that usually originate at the secretary of state's office, and pass under the great seal of Great-Britain. And this deponent faith, that it appears to this deponent from the books in the said secretary of state's office, that the office of chief clerk to attend the supreme court residing in the town of St. Jago de la Vega, within his majesty's island of Jamaica in America, has been usually granted by the crown, by letters patent under the great seal of Great-Britain; and that the grants of that office have usually originated at the said secretary of state's office. And this deponent faith, that the manner of issuing of such and the like grants, according to the best of this deponent's knowledge, observation and belief, is as follows; (that is to say) That his majesty signifies his pleasure to the secretary of state, that a grant should be made of the office to such person or persons, as his majesty in his royal pleasure sees fit; and that thereupon a warrant is made out at the secretary of state's office, directed to his majesty's attorney or solicitor-general, to prepare a bill for the royal signature, to contain a grant of the office accordingly; which warrant is presented by the secretary of state to his majesty for his signature, and after being signed by his majesty, is counter-signed by the secretary of state, and entered in a book in the secretary of state's office, kept for that purpose, and is sent from thence to the attorney or solicitor-general; who thereupon prepares the bill, as directed by the warrant, and transmits the same to the secretary of state, who then attends his majesty for his royal signature to the bill; which, when signed by his majesty, is sent from the secretary of state to the signet and privy-seal offices; and from thence it



is transmitted to the lord high chancellor of Great-Britain, in order to pass the great seal."

WILL. POLLOCK.

Sworn in Court, 18th

Nov. 1769.

By the Court.

*In consequence of those several affidavits and exhibits filed by the duke of Grafton;*

On Monday, the 20th of November, at Night, Mr. Vaughan was served with a copy of the rule of court, as follows :

Tuesday, next after the octave of St. Martin, in the  
tenth year of king George the third.

Middlesex. Upon reading the several affidavits of his grace Augustus Henry, duke of Grafton, and three paper writings thereunto annexed, of Samuel Baldwin, gentleman, Richard Reynell, esquire, and of William Pollock, esquire, it is ordered, that Saturday \*, in fifteen days from the day of St. Martin, be given to Samuel Vaughan to shew cause, why an information should not be exhibited against him, for certain misdemeanors. Upon notice of this rule to be given to him in the mean time.

On the motion of Mr. Solicitor-General,

By the Court.

MR. VAUGHAN'S affidavit in answer, filed the 27th of November †.

[illegible]

SAMUEL VAUGHAN, of Mincing-lane, merchant,  
the above defendant, maketh oath, " That on, or about

\* November 25th.

† The critical reader is desired to observe the very short space of time allowed the defendant to prepare his answer.

the



the tenth day of June last, he did send under cover, directed for his grace the duke of Grafton, the three several papers respectively, A, B, C, and which have been produced as exhibits in this case \*. And this deponent saith, that he is now, and hath been, ever since the 25th of March, 1765, entitled to the profits of the said office, subject to the payment of a certain annual sum, by virtue of an agreement with the proprietors thereof; and this deponent hath been informed by deeds, and other papers relating to the said office, and verily believes, that the same was granted, by letters patent, 6th April, 1716, to John Page and his assigns, for the life of Page; which Page was a trustee in the said office for one Woodhouse; who having died considerably indebted, the benefit of the said trust was directed to be SOLD by a decree of the court of chancery †, for the satisfaction of his debts; and the same was purchased by John Lawton, at the sum of thirteen hundred and fifty pounds, for the joint benefit of himself and of Nicholas Paxton. That upon a petition presented by the said John Lawton and Nicholas Paxton, setting forth the above facts ‡, a new patent was granted on the 25th of

\* Had Mr. Vaughan put the proof of the delivery of his affidavit upon the duke, it might *in point of law* have failed.

† Bearing date the 27th of June, 1733. Cause entitled Pierpoint and other creditors, against Caswall and others; by which it fully appeared that James Woodhouse had mortgaged the said place to sir George Caswall, knight.

‡ The following are extracts from the petition presented to his majesty king George the second, by Mess. Lawton and Paxton, "April 6th, 1716, his majesty king George the first granted  
" to John Page, or his assigns, (for the life of Page) the office  
" of chief clerk to attend the supreme court, residing in the  
" town of St. Jago de la Vega, in Jamaica. This place pro-  
" duced to Mr. Page 250 *l. per annum*. Mr. Page was only  
" trustee for one Woodhouse, who died in debt, and the em-  
" ployment for Page's life was ordered to be sold for the pay-  
" ment of Woodhouse's debts by a decree of the court of  
" chancery.—Under the said decree, Mr. Lawton bought the  
" said place for Page's life for 1350 *l.* for his own use, and Mr.  
" Paxton's jointly."—"Mr. Lawton and Mr. Paxton, most  
" humbly pray your majesty, to give them a reversionary grant  
" of the office, to take place after the life of Page, to them or  
" the survivor of them, or to give them leave to name another  
" person in the room of Page, (who will resign his interest,)  
" that they may have a patent for three lives."

September,



September, 1735, to the said Nicholas Paxton, John Lawton and Abraham Farley, to hold the said office for their natural lives, and the life of the survivor. That Abraham Farley, on the 12th of February, 1735-6, executed a deed, declaring that his name was only used in *trust* for the said Nicholas Paxton and John Lawton, their executors, administrators and assigns. And, upon the fourth of June, 1736, the said Nicholas Paxton and John Lawton executed a deed, declaring that no benefit of *survivorship* should be taken of either of them. That, upon the death of Nicholas Paxton, his moiety of the office was *sold* to Samuel Tufnell and Joseph Richardson for thirteen hundred and eighty pounds, and their interest therein vested in John Richardson and Charles Tufnell. That the moiety of John Lawton was by his will *bequeathed* to Ann his widow, (and now the wife of the reverend Mr. Whittington) for her life, and then to his brother Henry Lawton for his life, and after his decease to Robert Lawton, nephew of the testor. That the said office had been *demised*, as he hath been informed and believes, by the proprietors thereof at a certain annual rent, and was so demised by them to one John Evans †; who dying in November, 1764, this deponent applied

† Mr. Vaughan and many others having been considerably injured by the neglect of former clerks of the court, in not recording the judgements obtained; he therefore in 1762, encouraged Mr. Evans, a person every way qualified for that trust, in his design of applying for the deputation, as the lease of the person who then possessed it was nearly expired; Mr. Evans obtained a seven years lease, and Mr. Vaughan (at his request, and with no other view than the advantage he should receive in common with the public, from the proper management of the office) became security for his good behaviour, for the payment of the rent, and for the annual delivery of four puncheons of rum in the river Thames. And, in order to enable him to leave England immediately, to take upon him the execution of that office, Mr. Vaughan lent him near 3000l. sterling upon his own bond, at 5 per cent. though Mr. Evans would have given 6 per cent. the legal interest of that island.— N. B. Interest of money was reduced in 1738 from 10 to 8 per cent. and in 1752 to 6 per cent. the present interest. When Mr. Vaughan left Jamaica in 1752 to settle in London, he gave up all his securities bearing 8 per cent. interest, and some old bonds (taken in payment) at 10 per cent. in lieu of others at 5 per cent.—This is mentioned merely to shew, that he had no desire to encrease



applied for and obtained, in February, 1765, an appointment of the said office, together with two other offices in the said island, *viz.* the office of clerk of the crown, and clerk of the peace in the said island (which were all comprized in the letters patents in 1735 to Lawton, Paxton, and Farley) upon the same terms that Evans had held them; which were the payment of four hundred guineas, and four puncheons of rum *per annum* to the proprietors thereof; and this deponent hath ever since enjoyed the profits of the said offices, and exercised the same, by himself, or other persons authorized by him. And this deponent further saith, that the office of clerk of the supreme court in the island of Jamaica, as expressed in the patent of the eighth of king George the second, is *from time to time to sign and seal all writs and other process issuing forth of the said supreme court, and also to enter decrees and other proceedings, and to keep the records of the same court*; and that such hath been the business and duty of the said office; and this deponent apprehends that office neither is nor ever was judicial, but is similar to the offices of prothonotaries, chirographers, filazers, and other offices of the *courts of Westminster-hall*\*; all which places in England, as this deponent hath been credibly informed and verily believes, have been *sold*; and that the place of the clerk of the supreme court in Jamaica having been *sold* for payment of debts by a decree of the lord chancellor, and having been *devised, settled*†, *aliened* and *demised* for years, this deponent did and doth conceive, that it was not one of those offices, which ought not to be saleable by any person whatso-

encrease his fortune but by *generous* and the *most honourable* means. In apology for giving this and other general views of Mr. Vaughan's conduct, let it be observed once for all, that his enemies by various methods prejudiced the judgement of the public, long before he had an opportunity of defending himself; hence it was necessary to mention some particulars, which would otherwise have been entirely concealed from public view.

\* The only difference between those offices *so sold*, and that of the clerk of the supreme court in the island of Jamaica, is, that the former are held under the lord chief justice or the lord chancellor for the time being, the latter under grant from the crown.

† Mortgaged.

ever.



ever\*. And this deponent further saith, that before he received any appointment to the said office, and while he resided in Jamaica, the clerk of the supreme court neglected the recording of judgments obtained; by which means he, (this deponent) as well as many others, became very considerable sufferers; and that the deponent was induced to apply for the said office in his own name, on the death of Evans †, for whom he had been security,

\* Provided such money was properly appropriated.

† Upon the death of Mr. Evans, his widow wrote to Mr. Vaughan, desiring him to intercede with the proprietors that she might enjoy the remainder of her late husband's term in the lease. He accordingly shewed her letter to the patentee, and the proprietors; seconding her request to each of them, and offering to become security for the payment of the rent, and likewise for the appointment of proper persons to officiate in a post which was of so much consequence. But this was objected to as impracticable. Mr. Vaughan then desired, that he and four other persons then named, (who he was persuaded would faithfully discharge the trust) might be deputed, telling them, that he should make it a condition with the acting deputy (who he intended should enjoy all the profits) to pay the widow one hundred pounds sterling per annum, for the term of her late husband's lease. A deputation, and deed of lease for seven years was accordingly executed, which will expire the 25th of March, 1772, or upon the death either of Mr. Farley or Mr. Vaughan. ---Mr. Vaughan had not at that time the most distant idea of having any share in the benefit of it. His best friend however soon afterwards recommended it to him, to avail himself of the opportunity of enjoying part of the profits of so lucrative an office, especially, as there would be sufficient encouragement for the deputy.---He took the advice, and with that view determined to go out and settle the office himself, and soon after embarked for the island. Upon his arrival there, he laid down a regular plan for conducting the office. He took a bond from Cheney Hamilton, Esq; whom he appointed his acting deputy in 5000l. penalty, to pay him (Mr. Vaughan) an advanced rent therein mentioned. He made it an express condition in the bond, that Mr. Hamilton should give up all other business and reside constantly upon the spot; stipulating therein, that Mr. Hamilton should pay to Thomas Atkins, the next in deputation, 200l. sterling per annum,---to the clerks their annual salaries,---and to Mrs. Evans the sum of one hundred pounds sterling for the remainder of the term of her late husband's lease; and that he should likewise discharge all incidental expences; with a condition, that, if after the payment of the rent, &c. the remainder of the neat profits should not amount to 500l. sterling for his salary, Mr. Vaughan obliged himself to make up to him whatever should be wanting of that sum;---for this however as yet there has been no necessity; the deputy having hitherto received considerable additional advantages.



in consideration of the benefit that would accrue to himself and other persons who had debts owing to them in Jamaica, by a regular execution of the office. And the deponent, upon his appointment, went over to Jamaica, where he continued for some time, settled and put the office upon a respectable footing. And this deponent saith, that he has been informed and believes, that before Mr. Bontein's appointment to that office, (whom Evans succeeded) no more than one clerk had been statedly employed in that office, at the usual salary of one hundred pounds currency *per annum*; but that he (this deponent) has and does secure to his deputy, five hundred pounds sterling *per annum*, clear of all charges, to execute the office; that he also secured two hundred pounds sterling *per annum* to the next in nomination while in office; that the head clerk had and has two hundred, and the inferior clerks one hundred pounds currency *per annum* each; by which ample provision, able persons are engaged to discharge the duties of the office with regularity and dispatch \*. And that he (this deponent) hath voluntarily, and without solicitation, allowed the widow of Mr. Evans, deceased, (who was the last deputy in office) one hundred pounds sterling *per annum* ever since his appointment †. And this deponent saith, that by the votes of the assembly in Jamaica it appears, that since

\* The difference in the regularity of the management of the office is the more remarkable, as in Mr. Bontein's time (1758) an act passed (by his interest) which augmented the fees upwards of 3000l. *per annum*; whereas, in the year 1763, when Mr. Evans was deputy, they were considerably reduced by an act, which was to continue in force three years; and at the expiration of that time in 1766, while Mr. Vaughan had the deputation, they were reduced still further, and regulated according to the original law of 1711, and thus they continue at this time.

† Mr. Vaughan received a letter from his deputy Cheney Hamilton, dated, Jamaica, 23 Feb. 1766, wherein he advised, That Mrs. Evans was married to Mr. Ramsay, register in chancery, the 13th inst. and that, as she was no longer the clerk of the court's widow, but was the wife of another person, who had a good office to depend upon; he advised to withdraw the annuity. To this, the 13th of May following, Mr. Vaughan returned for answer, 'That the promise to Mrs. Evans of an annuity, was not intended to the name, but the person, therefore he could not in honour withdraw it.'



the said appointments of Mr. Evans and this deponent, frequent complaints have been made against the practices of all the public offices in Jamaica, that of the clerk of the supreme court only excepted; which office, since that time, appears to have been regularly conducted, and that no more fees have been demanded or received in that office, than what was by law established\*; although by the report from the committee appointed to inspect the public offices, it appeared, “that the fees so by them taken  
 “under colour and pretence of usage and custom, are  
 “in many instances four times more than is allowed by  
 “law, and that in general, the fees are much more  
 “than warranted by law.” That the following report was made to the assembly the 18th of November, 1767.  
 “Your committee have also examined the records of  
 “the office of the clerk of the supreme court, and do  
 “find that office to be carried on with great care, the  
 “records duly entered up; and the present gentleman,  
 “who has the conduct of that office, has also provided  
 “books, wherein he carefully enters all writs of view  
 “with their returns, also all proceedings had in parti-  
 “tion, and other matters, which are of great use to the  
 “public, and greatly tend to the safety of the suitors of  
 “that court, and particularly to the holders of land in  
 “this island.” And this deponent further saith, that upon his return from Jamaica, from the very extraordinary trouble and expences he was and continues to be at, for the regulating and securing the due execution of the office beyond any of his (this deponent’s) predecessors, he (this deponent) thinking he might plead some merit, laid before general Conway, then secretary of state for the southern department, the *case*, except the last article, and the *report* that has been exhibited in this case, in confirmation; as also an humble petition to the king†, the same, as far as circumstances would admit, as that of Messrs. Lawton and Paxton, upon which the last patent was granted, praying a reversionary grant in his own and his son Benjamin’s name; with the following additional testimonial, signed by the principal Jamaica merchants and planters residing in this kingdom;

\* Vide the appendix.

† Mr. Vaughan left them with general Conway, who kept them some weeks, and then returned them.



who, from a conviction of this deponent's having promoted public security in that island, gave countenance to his request.

“ May it please your Majesty,

“ We the subscribers do most humbly certify, that  
 “ Samuel Vaughan, Esq; is a person of known reputation ; that he hath resided many years in the island of  
 “ Jamaica ; and that we do believe him fully qualified  
 “ for the direction of the above-mentioned office.”

† Rose Fuller	Beeton Long
* Stephen Fuller	Marm. Hilton
George Haley	Vincent Biscoe
Thomas Fuller	Thomas Truman
† Edward Morant	George Chandler
Peter Simmond	† William Baker
Robert Allen	Barlow Trecothick
John Serricold	Samuel Turner
† George Aufrere	† John Tomlinson
Thomas Hall	Capel & Osgood Hanbury
	Collet & Co.

And this deponent further saith, ‘ That he requested the favour of Mr. Henry Newcome of Hackney, who was honoured with the duke of Grafton's friendship, (then secretary of state for the northern department †) to deliver this deponent's *case*, and other *credentials* || to the *duke*, and to crave his interposition. Shortly after, this deponent received inclosed from Mr. Newcome, the duke's answer, of which the following is a true copy.

Grosvenor-square, Jan. 28, 1766.

“ Sir,

“ In answer to your favour of the 24th inst. relative  
 “ to Mr. Vaughan, I am to acquaint you, that I have

† Members in parliament.

\* Agent for the island of Jamaica.

† When the late duke of Newcastle was secretary of state for the northern department, the plantations were under his direction ; and, as the duke of Grafton was at this time in the same post, Mr. Vaughan applied to him, as well as general Conway, who had the southern department, and to no other person.

|| Viz. Copies of his *case*, the report, and petition to the king, with the certificate.

“ made



“ made it a rule not to interfere in any department but  
 “ my own ; and as that gentleman has already applied  
 “ to the marquis of Rockingham, and Mr. secretary  
 “ Conway, to whom this affair properly belongs, I  
 “ make no doubt, if it is a thing that is proper, but  
 “ that they will come into it. I am, with great re-  
 “ gard

“ Sir,

“ Your most obedient humble servant,

“ Mr. H. Newcome.

“ GRAFTON.”

And this deponent further saith, ‘ That he apprehends the duke had been misinformed ; this deponent never having applied to the marquis of Rockingham upon that account \*, although he had frequent opportunities had he thought it necessary ; but only to the secretaries of state, to whose department he supposed it more properly belonged †. That this deponent, not having succeeded in his application at that time, had laid aside all thoughts of any farther application, till the occasion after-mentioned ‡. This deponent further saith, that, in February, 1769, Mr. Richardson called upon this deponent to acquaint him, that one Mr. Howell, (who this deponent knew, had formerly been a surgeon to the hospital in Germany, and had afterwards gone out as stamp-master to Jamaica ||) had applied to each proprietor and offered a larger rent, or to purchase outright the patent for Mr. Farley’s life ; this deponent answered, that what he had done for the public security of property, the interest he himself still had in continuing to secure it, and the approbation he had met with from the gentlemen concerned, gave him, he hoped, some claim to a pre-

\* Because lord Rockingham was first lord of the treasury. This is an evident proof that Mr. Vaughan would never have applied to the first lord of the treasury for this office, (it being out of his province) had it not been for the duke’s interference in the disposal, as will appear hereafter.

† As is verified by Mr. Pollocks’s affidavit, p. 12.

‡ Mr. Vaughan not being able to find access to the throne, made no further attempt from December, 1765, until the 22d of March, 1769, to procure a patent ; and then, roused by the attack made upon his property in the lease, he hastily determined to use every justifiable means in his defence.

|| Mr. Howell had at this time a fourteen years lease of the provost marshal’s office, the most lucrative in that island.



ference; and that, in case the place was to be lett for a longer time, or to be sold, he this deponent would give for it as much as any other person. To this Mr. Richardson assented, and promised for himself, to give him (this deponent) the preference. Shortly after, captain Tufnell gave this deponent the same assurances. And this deponent further saith, that some days after this, Mr. Richardson and captain Tufnell came to him this deponent, and that the former said, that Mr. Howell had called upon him with a further proposal, adding, that he had agreed with Mr. Whittington for his moiety; to which Mr. Richardson replied, that he could do nothing in the affair without first consulting him this deponent. At the same time captain Tufnell said, that, notwithstanding this, Mr. Howell had come directly from Mr. Richardson to him in the country, assuring him that he had agreed both with Mr. Whittington and with Mr. Richardson, and only wanted his concurrence; that captain Tufnell had given for answer, that he could do nothing until he had seen Mr. Richardson and this deponent; and that they then both declared their dislike \* of such unfair proceedings. And this deponent further saith, he then, in order to secure beyond doubt his property in the lease, said he would give more than any other person, requesting they would name a price: this was declined, but they again both promised, that this deponent should have a preference. And this deponent further saith, that upon the 22d of March, he met Mr. Whittington at home, when he (this deponent) pleaded the reasons he had to expect a preference, offered to give more for the office than any other person, and acquainted him with the promise given by Mr. Richardson and captain Tufnell, to give him (this deponent) a preference. To which Mr. Whittington replied, that at the instance of the duke of Grafton, lord Hertford, general Conway, &c. he had consented to dispose of his moiety for Mr. Farley's life to Mr. Howell; that the agreement was made, and that he was under such ties, as put it out of his power to retract; and said, if the marquis of Granby applied to captain Tufnell, and the duke of Grafton to Mr. Richardson, they could not withstand so powerful

\* Contempt, was the expression they both made use of.



an interposition. That this deponent went immediately from Mr. Whittington to Mr. Richardson, who, after being acquainted with what had passed, generously confirmed his former assurances of giving him (this deponent) a preference \*. And this deponent further saith, that as he had not the least recommendation to, or interest with the duke of Grafton, (who had formerly declined to interfere in this matter, as not being within his department) he requested Mr. Richardson would, by means of † Mr. Stonehewer, the duke of Grafton's secretary, apply for a patent in the name of himself and his son; but this Mr. Richardson declined ‡. This deponent not finding captain Tufnell at home, then went to Mr. Howell, and expostulated with him upon the impropriety of treating for a resignation to the prejudice of his lease, desiring, in case he was determined to pursue his purpose, that he would give the proprietors and himself a meeting, to the intent, that each might fix upon the utmost that he was willing to give, in order to have the affair finally determined. This Mr. Howell rejected; but offered terms to the deponent, in case he would not interfere in the purchase of Mr. Richardson and captain Tufnell's moiety for Mr. Farley's life §; which terms this deponent, having the

\* Mr. Richardson added, that though he had the highest regard for the duke of Grafton, yet should any application be made, nothing should induce him to break his promise.

† His relation.

‡ Altho' Mr. Richardson informed Mr. Vaughan, that he had been with the duke of Grafton in his closet, who told him, that he did not know Mr. Howell, but that in case Mr. Bradshaw solicited the appointment, he would oblige him.---Mr. Bradshaw being secretary to the treasury, and thought by many to be the duke of Grafton's confidant, Mr. Vaughan presumed that he understood this acquiescence, and supposed it to have been founded upon some previous condition, as he could not think it probable, that the duke would appoint an unknown person to a place of that trust and profit, merely upon the recommendation of a secretary. Indeed this was a principal reason why Mr. Vaughan imagined Mr. Howell had offered money or conditions, either to the duke or his agent.

§ Mr. Howell said, if Mr. Vaughan would not interfere, he should continue in office the term of his lease, and after that, should have a new lease made out to him upon *reasonable* terms, but without at all specifying the terms. This Mr. Vaughan, *after what had passed*, could not consider as any security at all.

pro-



promise of the moiety of Mr. Richardson and captain Tufnell's, and having, as he thought, a superior claim to a preference in the grant, rejected. Mr. Howell then answered, that the duke of Grafton had promised him a patent for the office, upon Mr. Farley's resignation; which resignation he should endeavour to procure as soon as possible, lest a *change of ministry should take place*. This deponent thought this procedure, as it would have annulled this deponent's lease, unjust in Mr. Howell †, who could claim no merit with respect to the office: and finding himself thus unexpectedly and powerfully attacked; and considering the duke of Grafton's interference when it was out of his province as a commissioner of the Treasury, although he had declined it, under a strong recommendation when secretary of state; and this deponent being also informed, that a consideration was usually given for such places in the colonies:—upon these grounds this deponent judged that Mr. Howell had offered a consideration, and therefore that he had a right to counter-act him, rather than submit to the ill usage he had received, and to be deprived of his legal right in the lease; as this deponent apprehends that a resignation of the patent upon which his lease was founded, would have cancelled the force, or effect, of the said lease; and that all grants in consequence thereof, would become null and void. Therefore he, (this deponent) as the only remedy left to preserve his right, had again recourse to Mr. Henry Newcome of Hackney, to whom he went that afternoon, and acquainted him with Mr. Howell's and Mr. Whittington's behaviour, with his own pretensions, and with the difficulty he was under to make his case known to the duke of Grafton, who, he concluded, had forgot this deponent's former application. And then he (this deponent) the second time, read to him his *case* or memorial, and the *report* of the committee, appointed by the assembly of Jamaica to inspect the clerk of the

† Especially as he well knew Mr. Vaughan had taken a voyage to Jamaica, on purpose to put that office on a regular and respectable footing; and that there were three years of his lease unexpired. Yet he privately endeavoured to invade Mr. Vaughan's property in the lease, to frustrate his pretensions to the renewal of it; and in case of Mr. Farley's death, to prevent even a chance of procuring a patent.



court's office, exhibited in this case; and also acquainted him with his intended proposal and *oath*. Mr. Newcome expressing his doubts, how such a proposal might be taken; this deponent replied, from the information he had received, that he looked upon the proposal as a thing of course and customary; and mentioned a case of a relation of his, that this deponent then thought similar to a consideration for a patent for an office not *judicial* for three lives, which had been, and was negociable and saleable; and further remarked, that it was well known, that commissions in the army were publicly \* sold. And with regard to the proposed affidavit, this deponent observed, that it was intended to be lodged in his (Mr. Newcome's) own hands, as a security for complying with the conditions offered; to remove any doubts which might arise from the part this deponent had taken in public affairs, of his having any *ensnaring views* towards the duke; and to put himself, in this respect, upon the footing of an indifferent or unknown person. That he (this deponent) trusted, when his pretensions should be known and attended to, that it would evidently appear, the public security was connected with his own; and that, as he had already acquired sufficient experience to direct that office, he hoped a preference would be given to him, in case of Mr. Farley's resignation or death, or words to that effect. That this deponent then gave his *case* or memorial and *report* to Mr. Newcome, saying, that he would make the *affidavit* the next morning, and send it to him, that he might deliver the case and report, and communicate as much of the affidavit to the duke of Grafton, as he should think proper. To which Mr. Newcome made no objection ‡. Therefore, early the  
next

\* And in the navy also, privately. A relation of Mr. Vaughan's, now abroad, although bred up in the army from his infancy, a soldier of known worth, wounded also in the service of his country; even this man was obliged to purchase every commission, from a pair of colours, to that of a lieutenant-colonel.

‡ In a narrative intended for publication, and which Mr. Vaughan shewed to Mr. Newcome more than once for his approbation of what related to him, it was said, *to which Mr. Newcome assented*, as he certainly did. But Mr. Newcome, from forgetfulness denying the having given his consent, Mr. Vaughan  
E after-



next morning, (March 23) he (this deponent) drew up the affidavit, swore to it before the lord mayor, and sent it that morning to Mr. Newcome. And this deponent further saith, that after having sent the affidavit, he (being very uneasy at the hard conditions to which he was reduced, in order to secure his property, notwithstanding his having heard that the measure was usual and customary for obtaining lucrative places, and that he had reason to think it necessary in this case, in this way, to counter-act the measure of his antagonist, and being desirous, if his property could be otherwise secured, to prevent the proposed application to the duke,) immediately went to Mr. Richardson, in Downing-street, Westminster, and, after much conversation upon Mr. Howell's behaviour, and the danger this deponent was in, of having his lease rendered null and void by a resignation, again solicited Mr. Richardson to name a price, and offered to give whatever sum he would fix upon, for his quarter of the lease for Mr. Farley's life; that they might come to a certain agreement, in order to prevent a resignation; which, could it then have been effected, would have rendered the application to the duke of Grafton, by means of Mr. Newcome, unnecessary. But Mr. Richardson declining to name any sum, he (this deponent) offered to give him a sum for his quarter, which, after some time, Mr. Richardson consented to accept, provided that captain Tufnell would approve and agree to the same condition. He (this deponent) therefore, immediately went to Mr. Barrett, agent to captain Tufnell, who informed him the captain was in the country with his regiment. This deponent therefore immediately made the same proposal by letter to the said captain Tufnell\*; which letter he read over to Mr. Richardson before he sent it. And this deponent further saith,

afterwards made it conformable to Mr. Newcome's idea, in a narrative interlined with Mr. Newcome's own hand.

\* The following is a copy of Mr. Vaughan's letter to captain Tufnell, viz.

Sir,

London, 23 March 1769.

Yesterday Mr. Whittington informed me, that he had received a message (I think per Mr. Howell) from the duke of Grafton, general Conway, &c. that they should be glad he would



faith, that he then had intentions of going to Mr. Newcome, to prevent any application to the duke of Grafton, until he knew the success of his letter to captain Tufnell †, but that he, that afternoon or evening, received a letter from Mr. Newcome by his usher; and of which the following is a true copy.

“ Dear Sir,

“ UPON every occasion it will be a great pleasure and  
 “ satisfaction to me to comply with Mr. Vaughan’s  
 “ request, to whom I must acknowledge myself in-  
 “ debted for many kindnesses; but revolving over the  
 “ late affair in my mind, and considering it more ma-  
 “ turely, I must beg leave to decline interfering in the  
 “ affair, intirely from motives of fear, which perhaps  
 “ may arise from needless scruples; yet I must acknow-  
 “ ledge, the uncertainty how such an application may

would come upon terms with Mr. Howell, for the residue of Mr. Farley’s life in the office in Jamaica, (in which case Mr. Howell said, he had a promise of the patent;) and at the same time intimated, that, if the duke applied to Mr. Richardson, and the marquis of Granby to yourself, neither of you could resist such powerful application. I am this moment come from Mr. Richardson, who has lately enquired of his grace’s secretary, his relation (who knows nothing of any application or engagement, therefore it may be doubtful, whether it is not thrown out, to enhance the price; but be that as it may, the place being of importance to me, for recovering of my debts, to prevent the effects of so powerful an interposition, I have offered Mr. Richardson eight hundred pounds for an assignment of his right to one quarter of the office, commencing the 25th instant, which, if approved by you, he hath agreed to take.

Therefore, to prevent the consequence of any such application, I take the first opportunity to make the same offer to you, which if approved, upon sending up a receipt, to the effect as at foot, the money shall be paid to your order. I request the favour of an answer, and that you would accept my thanks, for your very candid and genteel behaviour in this affair, and am with great regard,

Sir,

Your obliged and most obedient servant,  
 SAM. VAUGHAN,

To Charles Tufnell, esq;  
 captain in the Blues,  
 Nottingham.

† It may be observed that the whole of what is related in the last six pages, was the transaction of twenty-four hours.



“ be received, obliges me to express my fears upon this  
 “ occasion: but at the same time, I must express my  
 “ mortification to decline a request of yours; yet the  
 “ point appears to me of a very delicate nature. I have  
 “ received the paper of this morning, which I will de-  
 “ liver into no hands but yours; and never shall open  
 “ my lips upon the affair. I am, with the greatest re-  
 “ gard and esteem,

Your sincere friend and humble servant,

HENRY NEWCOME.”

Directed under cover to Samuel Vaughan, esq;

And this deponent further saith, that shortly after, he went to Mr. Newcome at Hackney, of whom he received back the papers, and then informed him, that his refusal would effectually preclude him from any other mode of application, having engaged not to mention the proposal to any other person than Mr. Newcome; and that he must give over all thoughts of applying to the duke of Grafton. That, upon this deponent's coming home, he inclosed and sealed up the affidavit under cover, and laid it by †. And this deponent further saith, that the 28th of March he received an answer from captain Tufnell; of which the following is a true copy.

“ Sir, Nottingham, March 26th, 1769.

“ I am this day favoured with yours of the 23d, must  
 “ beg leave to have a few days to consider of your pro-  
 “ posal; at the same time, I can't help saying, I think  
 “ you rather undervalue it; for, if I mistake not, I  
 “ think Mr. Richardson was offered seven hundred and  
 “ fifty pounds for his share, long before we came to  
 “ you, and I refused it. I shall be in town about the  
 “ 14th or 15th of next month, when I will do myself  
 “ the pleasure of waiting upon you with my final deter-  
 “ mination; and you may assure yourself, that no *power-  
 “ ful application* shall have any effect upon me.

I am, Sir,

Your most humble servant,

CHARLES TUFNELL.”

To Samuel Vaughan, esq;  
 Mincing-lane, London.

And

† Apprehending Mr. Newcome might possibly change his way of thinking.



And this deponent further saith, that the 4th of April he received a letter from Mr. Richardson, of which the following is a true copy.

Northend, near Fulham, April 3, 1769.

“ Sir,

“ Yesterday Mr. Howell called upon me, and brought the inclosed from Mr. Whittington. He told me, he was very positive that Mr. Bradshaw had directions to wait upon me, in the duke of Grafton's name, and seemed to be surpris'd I had not seen him. I am,

Your most obedient servant,

JOHN RICHARDSON.

“ N. B. I told him I was under some engagements to you that I did not choose to explain.

To Samuel Vaughan, esq;  
in Mincing-lane.

And this deponent further saith, that the following is a true copy of Mr. Whittington's letter inclosed by Mr. Richardson.

Tufton-street, April 2, 1769.

“ Sir,

“ The bearer, Mr. Howell, has been strongly recommended to me, by persons of the highest *rank*, to succeed to the several offices in Jamaica, belonging to you, captain Tufnell, and myself. I have paid a proper attention to their recommendation, by partly agreeing with Mr. Howell, to surrender up my moiety to him for Mrs. Whittington's life, at the sum of 350*l. per annum*, provided Mr. Farley lives so long; and I make no doubt but you and captain Tufnell will approve of the like measure. Mr. Howell commences to pay the above rent, as soon as he gains the surrender. I am, Sir,

Your most humble servant,

JOHN WHITTINGTON.”

And this deponent further saith, that, on or about the 10th of June, he (this deponent) was informed that the marquis of Granby had wrote to captain Tufnell, that lord Hertford had personally applied to Mr. Whittington, and had afterwards invited him to dinner, to talk further



further upon the subject; and that Mr. Howell, supported by the *powerful interest* before mentioned, was using every possible method to procure a resignation of the patent \*. And, this deponent having repeatedly solicited Mr. Richardson and captain Tufnell, to fix a price for their moiety in Mr. Farley's life, in order to have his property in his lease secured; and when they were both together, being thoroughly sensible, that he was treating with gentlemen of great worth, he told them, that he would, and could afford to give more than any other person, not so circumstanced with respect to outstanding debts in Jamaica, requesting that they would name a price, (relying upon their honour,) and that he would readily give whatsoever they should think reasonable. As Mr. Richardson was an agent to, and captain Tufnell in the army, this deponent left every thing to their own determination, that the affair might be finished, before the ministry could interfere further, lest a refusal to enter into its measures should give offence. But this proposal was rejected. Therefore this deponent, being thus powerfully beset; fearing the consequences of such his situation, and having so many circumstances to confirm him in the opinion of the duke of Grafton's interference to forward a surrender, he (this deponent) did not doubt but that Mr. Howell had either offered a consideration, or that the patent might be intended as a recompence to him for some † services. Therefore he, this deponent judged ‡, if a *recompence* was intended to be made Mr. Howell, that his, this deponent's offer might very well serve the purpose; or, that if a *consideration* was necessary, he had an equal right to make a proposal, and a superior right to expect a preference. Therefore, he (this deponent) being excluded by his affidavit from engaging any other person §, or using any other method to make his case, pretension, and proposal, known to the person, with whose approbation the attack appeared to this de-

\* Mr. Vaughan was also informed that lord Hillsborough had interested himself therein.

† *Ministerial*, such as his voting for colonel Luttrell, &c. &c.

‡ To preserve his right, circumstanced as he then was.

§ Not even Mr. Bradshaw.



ponent to be made, and with whom *only* the power of redress seemed to be then vested;—for these and other reasons therefore, he, (this deponent) as the last, and only resource left in his situation, hastily wrote the *letter* to the duke, (the same as exhibited in this *case*) inclosing therewith his *case* and the *report*, as also his *affidavit*, which he then took out of the sealed cover, and sent without so much as reading it; otherwise he should have discovered the mistake, made through hurry, of the word *proposition* for *proposal*, and the omission of the letter d, in the word before John. And this deponent saith, that he did not apply for the place of clerk of the crown and clerk of the peace, which were included in one patent, (both which he now enjoys under lease,) but only for the office of clerk of the supreme court. And this deponent further saith, That shortly after he had sent his letter to the duke, he (this deponent) called at the duke's house in Arlington Street, but was told the duke was not yet come to town: he therefore left his name. Within a day or two he called again, when he was acquainted the duke was busy, but that he might call again in an hour: that upon his return he was informed, that his grace desired his compliments, but was engaged; therefore he (this deponent) resolved never to call more. And he (this deponent) farther saith, that Mr. Richardson having informed him that Mr. Lee, an attorney at law lately arrived from Jamaica, had offered four hundred pounds per annum of rent, for a moiety of the office, to commence after the expiration of this deponent's lease, together with a year's fine, altho' he, this deponent, believes he might instantly have agreed with Mr. Richardson upon those terms, yet he recommended it to Mr. Richardson, to make himself acquainted with the nature and value of the office by means of Mr. Lee, whose brother lives in Jamaica, is one of the deputies appointed by this deponent, and who was much better acquainted with the value of the office, than this deponent\*; and that he (this deponent) would give as much for it as Mr. Lee, or any other person. That afterwards at the request of this deponent, a meeting was appointed, for the

\* Adding, He did not know the value of the office; but that it was Mr. Richardson's business to get the most he could for it.



16th of June, when he, this deponent, desired Mr. Lee to say the utmost he was authorized to give †, by whom the rent was then raised to fifteen hundred guineas per annum, at which sum this deponent had the preference. This deponent then wrote and signed an agreement conformable, and drew up the following agreement, which he received in return.

“ Agreed, this 16 June, 1769, with Samuel Vaughan, to grant unto him a lease for one moiety, or half part of the offices of clerk of the crown, clerk of the peace, and clerk of the supreme court of judicature in the island of Jamaica, for and during the natural life of the present patentee Abraham Farley Esq; and for the time he continues patentee, that he the said Samuel Vaughan, or whatever person or persons he shall appoint, shall be from time to time deputed to the said several offices, to commence from the expiration of the lease, to the said Samuel Vaughan, at the annual rent of seven hundred and fifty guineas per annum, to be paid quarterly to us, share and share alike, the leases to be executed so soon as engrossed.

JOHN RICHARDSON.  
CHARLES TUFNELL.”

And this deponent further saith, That so soon as he was vested, by above agreement, with power to prevent a resignation, he sincerely regretted the having applied to the duke of Grafton\*; which he never would have done, but for want of such security. And this deponent further saith, That the 21st day of July, (about six weeks after this deponent's letter to the duke) Joshua Sharp Esq; called upon him, (this deponent,) and informed him, that he had received his letter, affidavit, case and report, from the duke of Grafton, with directions to acquaint him, that a prosecution would be commenced against him the next term, for the indignity offered to the duke; that he (this deponent) replied, “ That he was glad

† Mr. Lee having said that he acted by instructions received from his brother.

\* An application to whom, for a long time, he had studiously avoided.



“ of an opportunity to explain himself; and declared,  
 “ that the proposal was his own act, made without con-  
 “ sulting any one;—That from the light in which it ap-  
 “ peared to him, he thought his proceedings justifiable;  
 “ —That he imagined the duke † would naturally have  
 “ paid his first attention to the qualifications of such as  
 “ applied for places, that so every department might be  
 “ filled up with those who were the most capable, and  
 “ most likely to serve the public faithfully.”——He then  
 enumerated several reasons for his conduct, with the na-  
 ture of his claim and pretensions, set forth in this affida-  
 vit: adding further, “ That however he might have mis-  
 “ judged in making an offer, the duke had evidently this  
 “ advantage arising from it,—he now knew the value  
 “ and importance of the office;—that altho’ he was ready  
 “ to acknowledge to the duke an indiscretion in the af-  
 “ fair, a further concession might be construed into a  
 “ sense of guilt, which he could not take to himself ||;  
 “ —That if the duke would not be satisfied with this,  
 “ he was at full liberty to make whatever use of the ma-  
 “ terials he thought proper;—that he should make him-  
 “ self perfectly easy, under a full conviction of his own  
 “ integrity, and a persuasion that a strict examination  
 “ into the occasion and motives of his conduct, would  
 “ do him no dishonour;” or words to that effect. Mr.  
 Sharp then repeatedly recommended it to this deponent,  
 to engage Mr. Newcome to solicit the duke, not to com-  
 mence a prosecution. This deponent replied, “ That  
 “ he had not mentioned his late application by letter to  
 “ the duke, either to Mr. Newcome, or any other per-  
 “ son;—that he was by the spirit of the affidavit bound  
 “ to silence, and therefore did not choose to mention it  
 “ even to him, especially, as he was not conscious of a-

† He added, *As minister.*

|| Adding, “ That though he might have deserved well of his  
 “ country, yet having no connexion with the great in office, he  
 “ had little reason to expect a patent for a lucrative place, with-  
 “ out complying with what he had been informed was customary  
 “ upon such occasions, and which the premature application of  
 “ Mr. Howell rendered still more necessary, in defence of his  
 “ right in the lease,—but if the duke conceived it as an indigni-  
 “ ty, he could assure him that it was never by him so intended,  
 “ and that he was very sorry for having done it.”



“ny criminality; and trusted, the occasion and motive  
 “of his conduct, in defence of his property so notori-  
 “ously attacked, would justify the intention, if not the  
 “act.” This deponent then acknowledged his obligations to the duke for the early intimation of his intention, of which he added, “The only use he should make,  
 “would be to procure from Jamaica authentic testimonials of the exact regularity, with which his office had  
 “been conducted, ever since the time he had any concern  
 “in it, and to shew how much the public had been benefited since that time.” This deponent then read captain Tufnell’s, Mr. Richardson’s, and Mr. Whittington’s letters to Mr. Sharp, who promised to report to the duke of Grafton what had passed between them. And this deponent further saith, That when Joshua Sharp Esq; advised this deponent as a friend to procure Mr. Newcome’s solicitation to the duke not to commence a prosecution; to give it (as the deponent supposes) the more weight, he referred this deponent to Richard Maitland Esq; of Mark-lane, for his character. And this deponent saith, He having been so scrupulous in complying with the import of his affidavit, that he would not so much as take a copy, having sealed it up, when returned by Mr. Newcome, and it remained unopened, till the very instant on which he inclosed it to the duke, and being excluded by oath from making known the purport or nature of his proposal, which prevented him from explaining the nature of the case in his defence; therefore he (this deponent) drew up a narrative of what appeared to him to have been the subject-matter of conversation with Mr. Sharp, and requested Mr. Maitland to ask Mr. Sharp whether it was a just representation, and to desire a copy of his affidavit. And this deponent further saith, That Mr. Maitland informed him, that he had called upon Mr. Sharp the 8th of August, who acknowledged the representation to be nearly what had passed between them; and that Mr. Sharp had said, he saw no objection to the giving a copy of the affidavit, but could not do it without permission from the duke of Grafton, upon whom he would wait to know his pleasure. And this deponent further saith, That upon the 10th of August, Mr. Henry Newcome called upon this deponent, and informed him that he had that day waited upon the duke of Graf-



ton by appointment, and in the course of conversation (Mr. Grey Cowper being present) he told the duke that he had seen this deponent the night before, who desired him to request the duke's permission that Mr. Sharp might give a copy of the affidavit: that the duke replied, "It could be of no service in the intended narrative which Mr. Vaughan intended to publish, and that with respect to the oath that Mr. Vaughan had taken, he entirely *absolved* him from it \*:" that the duke added, "Had it not been for the affidavit, he should have concluded, that Mr. Vaughan had made the proposal with a design to have *entrapped* or *ensnared* him †; but that as it was a bribe, he was firmly determined that a prosecution should be commenced against him; that however culpable it appeared in his eyes, the crown lawyers judged it to be a misdemeanor, and considered it in a still more heinous light." That this deponent's suspicions and apprehensions, that the duke, from the part this deponent had taken in public affairs, might regard a proposal from him, without the security of an oath, to have been made with ensnaring views, are verified to have been just, by the duke of Grafton's remark; which this deponent apprehends justifies his considering the oath as an assurance to the duke, that the deponent was desirous in that instance to be looked upon in the light of an indifferent person, who how much so ever he might have opposed, or should in future oppose the present system of politics, was notwithstanding devoid of all ensnaring or treacherous designs. And this deponent further saith, That Mr. Maitland informed him, that he had upon the 16th of August again called upon Mr. Sharp, who told him he had not been able to see the duke of

\* Mr. Vaughan had an high opinion of the premier, and paid at all times due respect to him, but never considered that he was vested with the power of the Pope of absolving him from the oath. The duke hath however found out a method of annihilating all the obligation, by destroying the whole intent, spirit, and purport of it.

† The duke said farther, "That as Mr. Vaughan had the education of a gentleman, he must know the nature of an oath, which removed all suspicion."



Grafton, but had consulted Mr. Wallace ‡; who saw no objection to the giving a copy of the affidavit, but recommended it however to Mr. Sharp, first to obtain the duke's permission. That Mr. Sharp then promised, if permission was granted, to let Mr. Maitland know by a line. And this deponent further saith, That the 25th of August, he received a note, of which the following is a copy.

“ Mr. Maitland presents his compliments to Mr. Vaughan, and informs him, that he has just received a note from Mr. Sharp, to let him know that he is now making a copy of the affidavit, in order to deliver it into Mr. Vaughan's hands.”

Mark-lane, Friday morning,  
25 Aug. 1769.

And this deponent further saith, That the 26th August, he wrote to Mr. Sharp, requesting the favour that he would deliver the copy of his affidavit to his clerk the bearer, which was done accordingly †. And this deponent further saith, That in order to be sure of his authority, he has shewn the narrative of most, if not all of the several particulars contained in this affidavit to Mr. Richardson, captain Tufnell, and Mr. Newcome, who assented to the relation of those transactions, wherein they were respectively concerned ‖. And this deponent further saith, That the two following spurious letters were published from the 15th to the 19th of August, in the public papers, viz.

To the PRINTER.

S I R,

*Though the following is not literally a copy of the letter which has lately made such a noise in town, I presume it will not be unacceptable to your readers,*

*I am, &c.*

“ My

‡ King's serjeant.

† A copy of the affidavit was permitted to be given, but with great reluctance; seventeen days having elapsed (after application) before it was granted.

‖ The 7th of August last, a false and malicious representation was



“ My L----,

“ In matters of business, especially in the mercantile way, there is seldom any occasion for an apology.----  
 “ I am confident none will ever be expected where the stranger is announced, as bringing in his hand an offer of £. 5000.----To come immediately to the point, therefore, my L----, I am to inform your grace, that this sum is at your service, upon the reversion of the office of clerk of the crown for Jamaica, being settled upon my son,---and though when you see the name at the bottom of this letter, you may possibly startle at such a proposal, I doubt not but when you have perused the inclosed affidavit, you will be satisfied that this transaction will remain for ever a secret between your grace and me---need I add that however zealous I may have appeared in a cause I am much ashamed of, if I succeed in this affair, you will bind me and mine for ever to your interest.

“ I am,

“ Your Grace's most devoted

“ and obedient Servant,

“ S. V-----N.”

#### The second LETTER.

*The following is handed about at the west end of the town, as a copy of a letter from a patriotic citizen, to an unpopular minister.*  
 SAMUEL -----.

“ Your grace will no doubt be surprized at receiving this letter from me, more particularly on this occasion; but I flatter myself, that a little reflection will remove that surprize, and obviate any seeming inconsistency in my behaviour.-----Your grace, I am much afraid, may have been induced from some parts of my political conduct, to look upon me as an enemy, but I assure your grace, upon the word of a man of honour, that, notwithstanding appearances, such a supposition does

was spread with such indefatigable industry, both in the city of London and Westminster, as in one day to become the general topic of conversation, and soon after appeared in all the public papers in a manner highly injurious and prejudicial to Mr. Vaughan's reputation.

“ me



“ me the cruelest injustice.-----It is true, I have endea-  
 “ voured to oppose some measures of administration;  
 “ yet, believe me, these endeavours did not proceed from  
 “ any real disapprobation of those measures, but the con-  
 “ trary: I therefore hope your grace will not be offended  
 “ at my presuming to solicit your grace’s patronage and  
 “ assistance, in obtaining for my son, the reversion of  
 “ the place of ----- in the island of ----- . As this  
 “ may probably be attended with some trouble, and my  
 “ humble station in life, not permitting me to hope for  
 “ an opportunity of repaying your grace in kind, I have  
 “ taken the liberty of inclosing five bank-bills, for one  
 “ thousand pounds each, which I beg your grace will do  
 “ me the honour to accept of, as a small specimen of my  
 “ most profound respect, present esteem, and future gra-  
 “ titude.-----Fearing your grace should suspect me to be  
 “ base enough to make an unfair use of your grace’s con-  
 “ descension, in patronizing me on this occasion, I have  
 “ made an affidavit before my lord mayor, obliging my-  
 “ self to maintain an inviolable secrecy, with regard to  
 “ every circumstance of this transaction, which affidavit  
 “ I send inclosed.-----I hope your grace will pardon this  
 “ liberty, and believe me to be, with the most respectful  
 “ deference and unalterable esteem, &c. †.”

And this deponent further saith, That as he never gave  
 a copy of his letter to the duke of Grafton, to any person,  
 but as much as in him lay, prevented any part of the tran-  
 saction to transpire or be made public until the present  
 time; therefore upon this and other accounts, he (this  
 deponent) doth believe, that the said representation so  
 spread, and spurious letters so published, could come  
 from no person or persons, but such as had received their  
 accounts of it from the duke of Grafton or his agent. And  
 this deponent doth believe the said false representations  
 and letters, were published with a view to prejudice this  
 case in the opinion and judgment of the world, and to  
*traduce* and render this deponent *odious* ‡. And this de-  
 ponent

† Mr. Vaughan sent to the printer of the papers, to desire that  
 the persons who sent those letters might be given up, but this  
 was peremptorily refused.

‡ Mr. Vaughan supposes, that this was also done to provoke  
 him



ponent is the more confirmed in this belief, as many of the public papers since August last, have abounded with false, groundless and malicious insinuations, representations and assertions, against this deponent, which he apprehends would never have been so closely and constantly pursued and kept up by chance ||; as so circumstantial a representation of the transaction, (however different it appeared afterwards, when altered to serve a purpose,) could come from no person, but one who was in *possession* of the materials; and as there was not the most distant idea in this deponent's mind, or intimation in his letter to the duke of Grafton, that he would ever relinquish his principles, abandon his connections, or abate his ardour in the cause he had espoused. And this deponent saith, notwithstanding all this, his (this deponent's) genuine letter never appeared in the papers, nor were those false representations or spurious letters ever contradicted; altho' the duke of Grafton or his agent had this deponent's original genuine letter to the duke, in their possession. And this deponent further saith, It being intimated to him that a prosecution was intended, he hath never directly or indirectly sent, or caused to be sent, a single line in explanation, justification, or defence, relative to the transaction, to any one daily or periodical paper, from the time of the transaction to this day. And this deponent further saith, That he has to the best of his knowlege and recollection, given a fair, honest and impartial account of every material circumstance and transaction in point in this case, without concealing or suppressing any one material circumstance in point in this case, to the best of this deponent's knowlege, memory or belief. And finally, this deponent submits to the *wisdom* and *justice* of this honourable court, whether his affidavit and letter, *circumstanced as he was*, prove him *guilty* of an *offence*, against the *laws of an country*.

SAMUEL VAUGHAN.

Sworn the 27th Novr. 1769,

at my house in Lincoln's-

Inn-Fields before me, E. WILLES.

him to say, or publish, in an unguarded moment, something rash, which might subject him to prosecution or punishment.

|| The production of ministerial hirelings!

The



The 27th of November, 1769, Mr. Solicitor General moved the court of King's Bench to make the rule against Mr. Vaughan absolute, whereupon Mr. Vaughan's council shewed cause for its being dismissed.

Mr. WEDDERBURN:

May it please your Lordship,

I AM on the part of the defendant, to shew cause why this rule for an information against Mr. Vaughan for certain misdemeanours, should be discharged. Not having heard the grounds of the motion on which it was obtained, I am unable from the rule itself to discover what is the particular specific offence meant to be laid to Mr. Vaughan's charge. From the matter contained in the affidavits, I take it to be an attempt to corrupt the noble duke, by an offer of a sum of money to obtain for Mr. Vaughan, or his son, an office in the colonies.—I presume I may safely suppose, that an attempt of this kind, if it had been made upon a person of no note, figure, or office, upon any person by chance, would have been too frivolous a matter to have troubled the court.—I fancy I may likewise presume, that it is not because of the noble duke's high quality as a peer of this realm, that the attempt becomes a matter of more serious consideration. There may be peers, to whom such a proposal made, would have exposed the person to no other punishment, than a great deal of ridicule. I observe the affidavit of the noble duke states, That his grace is one of his majesty's privy council, and the first commissioner for executing the office of treasurer of the exchequer: it is therefore to be inferred, that the attempt to corrupt him receives a criminal impression from one or both of these circumstances.—As to the first character of privy counsellor, I presume to lay that very much out of the question; because, in the long catalogue of privy counsellors, there are certainly persons to whom such a proposition would have received just the same treatment, as if it had been made to the first person one meets in Westminster hall: and besides, tho' there is a great deal of judicial business to be transacted in the privy council, yet this proposition has no relation to that part of the office of a privy counsellor. If it had been made to any judge in Westminster hall, the proposition would not become criminal,



criminal, nor the charge be at all aggravated; because only a proposition made to a judge concerning matters judicially before him, would be an offence. Then the noble duke is stated to be the first commissioner for the office of treasury of the exchequer. I shall lay aside the description of the first commissioner; because by the commission for executing the office of treasurer of the exchequer, all the commissioners are equal. The power is given to them or any three of them; and this court as a court of law knows no distinction between the 1st, 2d, 3d, 4th, or 5th. The noble duke stands in a situation that may be pretty well and pretty generally understood. But it is necessary in a court of law to point it out specifically, and that it be a known legal situation. The sum of the offence then is this,---An attempt has been made, as the noble duke states it, to tempt his grace to procure the office of clerk of the supreme court in the island of Jamaica, by an offer of a sum of money from Mr. Vaughan: I have endeavoured to see, whether there was any instance of a prosecution in any degree similar to the present: my enquiries have been attended with no success; other gentlemen, that have enquired with more industry, tell me that they can't discover, that ever there was in any past time an instance of any such prosecution as the present, where a person of the noble duke's character and rank appeared as prosecutor.-----I don't apprehend that the precedent (if it should pass into one) will ever be attended with any considerable degree of danger; for I may venture to foretel, that the court will not hear of many such informations. If the court were to be told of all the propositions that have been made to persons in the noble duke's situation, I am sure the common term of the courts sitting in Westminster hall would scarce be sufficient for discussing matters of that kind. I think I may likewise venture to conjecture, that, if Mr. Samuel Vaughan had been only known as a West India merchant transacting no other business, and his name remarkable for nothing else but a very considerable man in the commercial world, this application would never have been made. I propose first to lay before the court the particular facts with which it has been attended;---your lordship will indulge me then to make one or two observations on those facts; and I shall then submit the con-



deration of the legality of this prosecution.-----This office (of which the court have heard a very imperfect account from Mr. Reynell's affidavit,) is only that of clerk of the supreme court. He states, that, during the vacancy of the resident deputy in Jamaica, he was appointed to that office, and he thought fit to execute it by another deputy. He states that he understands and believes, not that he knows, that such and such things were transacted in that office. Mr. Reynell has a little mistaken in this. The office that Mr. Reynell executed was much more comprehensive than the present; for there are three offices in Jamaica, the office of clerk of the supreme court, the office of clerk of the crown, and the office of clerk of the peace, all of which happened to center in one person, at the time of whose death Mr. Reynell was appointed to execute the office. He therefore entered into the function of two other offices, as well as the present one. It will be necessary to shew the court, as far as we have been able to trace it, the history of the present office. This enquiry has nothing to do with the office of clerk of the crown, nor the office of clerk of the peace. Mr. Vaughan's application was strictly confined to the office of clerk of the supreme court. Upon the accession of king George the I. this office was granted, by letters patent in 1716, to one John Page. Page held the office by patent for his life, but was only a trustee for one Woodhouse. Both Page and Woodhouse were resident in England. Woodhouse, who was entitled to the benefit of the trust of this office during the life of Page, died insolvent, and by a decree of the court of Chancery this office was directed to be sold for the benefit of his creditors. Under that decree in the court of Chancery, Mr. Lawton purchased the office for the sum of £. 1350: he purchased for his own benefit and that of Mr. Nicholas Paxton, who, I take it, was *solicitor to the treasury*. --Mr. Lawton and Mr. Paxton applied in 1735, by memorial, praying a new grant of the office. A new grant was made and the office granted, in 1735 by letters patent, to Lawton, Paxton, and Abraham Farley, for their joint lives and the life of the longest liver---Farley executed a deed, declaring himself to be a trustee, and Lawton and Paxton executed a deed to bar the survivorship amongst themselves---Mr. Lawton died and devised his



his moiety to his widow (who is now the wife of the Revd. Mr. Whittington) for her life, and two persons in remainder after her death. The other moiety of Paxton's was sold by his executor, and purchased by Mr. Richardson and Mr. Tufnell, who gave the same price for the moiety of the office that Mr. Lawton had originally given for the whole.——Mr. Richardson devised his fourth part to Mr. John Richardson.——Mr. Tufnell's fourth part came to his son captain Tufnell. The right of the office stands thus at present. Mr. Farley, the last life in the patent, is still existing; the office belongs beneficially to Mrs. Whittington for her life for one moiety, and to Mr. Tufnell and Mr. Richardson for the other moiety. An office so situated, so granted, so bought and so sold, it may easily be imagined was not very punctually executed; and that the principals here, were concerned with little more of the office, than to receive as much money as they could from it. The conduct of the office occasioned naturally many complaints in Jamaica---great mischief and loss to the inhabitants. The duty of the office is *to seal processes, to sign writs, to enter up judgments, and keep the records of the court*; that is the business of the office. An office to be sure of very considerable importance; because if the complaints were founded, that have been made in the island of Jamaica, *the property in that island was extremely insecure*. Those who had any concerns in Jamaica experienced it extremely inconvenient to them. Mr. Vaughan had resided a good many years as a merchant there, and, after his return to England in 1762, he applied to the proprietors for a lease of the office, (the old lease being then expired,) not for himself, but for one Mr. Evans whom he appointed his attorney; for whom he became surety, and obtained it. Mr. Vaughan's reason for that application, was the security of his own property and that of others in Jamaica; not the profits of the office; for he had no benefit by being Mr. Evans's security. Upon the death of Evans, Mr. Vaughan took the lease in his own name; the lease was made to Mr. Vaughan in March 1765, by all the proprietors---a lease for seven years, determinable in case of the death of the patentee, or in case of Mr. Vaughan's death. When Mr. Vaughan had got this lease, he thought it his duty, as well as interest, to



go over to Jamaica and put the office upon a proper footing. He accordingly set out very soon after his appointment, and stayed in Jamaica some time, and totally altered the situation of that office. He appointed several clerks, and instead of the old allowance of 100 £. per annum, he gave to officers executing the office in Jamaica £. 1200 per annum. Those salaries were very proper and sufficient for the discharge of the duty. The first had £. 500, the second £. 200, and the others £. 100 a-piece; the duty of the office was executed properly. Mr. Vaughan had the satisfaction to find, that this office not only escaped censure, but the execution of the office met with very great applause. Mr. Vaughan returned to England, having put this office upon a regular footing, and having received the testimony of persons in Jamaica of their approbation of the regularity and care with which the office was executed; and he was then determined to make an application for the grant of the office, upon the determination of the right of the proprietors, in his own name. Accordingly, in the year 1766, he carried his testimonials to the then secretary of state, the noble duke, and Mr. Conway; and he supported this application by the testimony of the assembly of the island, as well as by merchants of the first eminence in England. He had the good fortune to be acquainted with a person for whom the noble duke had a great respect, Mr. Newcome of Hackney; and Mr. Newcome was the bearer of the application to the noble duke. It did not succeed; but the noble duke was so obliging, as to let him know very soon that he did not choose to do any thing in it; and in a letter to Mr. Newcome told him that he understood Mr. Vaughan had been making applications elsewhere, particularly to the marquis of Rockingham and Mr. Conway; and that he never chose to interfere out of his own department. In that respect his information was ill founded; for no other application had been made, but to the two secretaries, from that time to the year 1769. Mr. Vaughan remained in the execution of the office, entitled to the profits of it, and entertained no apprehensions about it, until the incident happened in 1769, which I am going to mention to your lordship—which incident was the motive that incited him to make the application now complained of. About the month of February or March,

Mr.



Mr. Richardson in London came to Mr. Vaughan, and told him he had been applied to, to dispose of his interest in that office, by a person who said he had interest enough (and made a very free use of the noble duke's name) to procure the office to himself. That he had agreed with Mr. Tufnell and with Mr. Whittington, and only wanted Mr. Richardson's consent. Mr. Richardson had been very well used by Mr. Vaughan, and thought he owed him some civility; he therefore acquainted Mr. Vaughan of it. The application, conveyed to Mr. Richardson an idea that some interest would be used with him to dispose of his right in the office. Mr. Vaughan enquired who this man was; he was informed it was one Mr. Howell. Mr. Vaughan was well acquainted with his history; knew he had formerly been an inferior surgeon in the hospital in Germany, and had afterwards gone out as *stamp-master* to Jamaica, where your lordship knows he received no considerable emoluments from his place; from thence he had worked himself into farther favour, had (as he said) applied to the noble duke, and told the proprietors that he should be glad to give them a good price, but that they *must* sell out. Mr. Vaughan was naturally alarmed at this. Mr. Tufnell, the other proprietor, he found had been applied to in the same manner; only Mr. Howell had changed his battery to the different proprietors, and represented all the others, except the man he addressed, as having agreed to this proposal. Mr. Vaughan found Mr. Whittington a great deal more inclined to Mr. Howell's proposition, than either of the other two gentlemen. Mr. Whittington told Mr. Vaughan "he should sell his share of the office, and that the other proprietors in the office must sell their shares too—Mr. Howell's interest would oblige them to do it; such a person would speak to Mr. Richardson, and he must be compelled to do it; another would speak to Mr. Tufnell, who, as an officer, could not resist the application;—Mr. Howell has such interest that there is no resisting it; for my part I have been spoke to in such a manner—I cannot resist." From all this, Mr. Vaughan was in great anxiety, and a good deal alarmed on account of the office. The consequences to him were very material. If there had been a surrender and a new title, this lease, of which three years were unexpired, would of course he thought have been determined.



determined. In point of law he did not judge amiss; because his lease at law was intirely gone; and, as he had no specific covenant that the nominee should not surrender, I am at a loss to know what relief he would have had. But however, it is sufficient, that he apprehended his lease was totally gone, and all the benefit he expected from that office—the benefit also for what he had done to that office, he saw frustrated. Soon after this, Mr. Richardson received a letter from Mr. Whittington; and this letter he transmitted to Mr. Vaughan, willing always as much as he could, to act fairly with respect to Mr. Vaughan. This letter was to press Mr. Richardson to accede to Mr. Howell's proposition, and he told him he was very much surprized he had not heard from other quarters, but he was confident he would; for he could assure him that Mr. Bradshaw had orders to wait upon him, and would in a day or two; and that the duke of Grafton interested himself in the matter. Mr. Vaughan saw the affair became more serious to him. His first object was to secure the interest of Mr. Richardson, and Mr. Tufnell, who were willing to treat with him, that they should not consent to a resignation of the office; and so to secure it negatively against any attack upon it. They both talked very kindly to him; but neither of them came to any conclusion, each referred to the other. Mr. Vaughan made his proposition—"Name your sum, I will give you any price you please; it is of great consequence to me that this office should not be taken out of my hands." They both declined naming the sum. Mr. Vaughan then went to Mr. Howell to talk with him upon the affair: Howell told him he should be very glad if he would withdraw his opposition, and permit him to take in the interest of the proprietors during Mr. Farley's life; but as to the office he was sure of it after Mr. Farley's death; only he said delays were dangerous to him.—— Mr. Howell was a man of more apprehension than courage; and he was afraid of a change in the ministry. He said, *I must have the office*; and, Mr. Vaughan, that I may get this matter done, I shall be glad to treat with you for the remainder of your lease. Mr. Vaughan, having Mr. Richardson and Mr. Tufnell, as he apprehended, more engaged to him than Mr. Howell, thought he had an interest in this worth keeping.——Mr. Howell  
2 could



could make no impression upon Mr. Vaughan to part with his office; but this impression remained in Mr. Vaughan's mind—Mr. Howell's confidence so far imposed upon the credulity of the others, that he (Mr. Vaughan) was fairly convinced, that Mr. Howell (this man who had been an hospital surgeon, and made no considerable figure in the world) had found the proper or improper method of success, and that the foundation of this interest was his money.

This was the idea credulously, improperly received by Mr. Vaughan, and yet not without great probability to a person in his situation. Mr. Vaughan has sworn he did believe it; that he thought Mr. Howell was acting against him by an interest, that he had no method of counteracting, but by opposing to it the same motives.—Mr. Vaughan went to Mr. Newcome, whom he had long been acquainted with; he told him, if the office was to be disposed of in that manner, it was worth his while to give more for it than any other man.—I must know, says he, I am a very obnoxious man; my name will not be any recommendation; I wish'd to have had Mr. Richardson apply in his own name: but to remove all such objection to me, as may naturally occur that I have proposed this for a trap, I will take an oath of secrecy to remove that; that the name of Samuel Vaughan may give no umbrage or suspicion.—Mr. Vaughan left him; and left him with an idea, that Mr. Newcome had no great difficulty about the matter. Next morning he sent the affidavit inclosed to Mr. Newcome, and immediately, in his anxiety and alarm applied himself again to Mr. Richardson and Mr. Tufnell; meaning, if they would agree with him, to intercept the application, and let it go no farther than to Mr. Newcome.—Mr. Newcome next day returned the affidavit. Mr. Vaughan's alarms increasing by the difficulties Mr. Richardson and Mr. Tufnell made, he inclosed that affidavit in the letter, your lordship has heard, to the noble duke. Soon after that step had been taken.—Mr. Vaughan had an opportunity with Mr. Richardson and Tufnell of making an absolute agreement, and they have profited considerably by Mr. Vaughan's fears and alarms; for I think the rent, which before upon the whole office was but £.400 a year,  
has



has now, by that new agreement, been raised to 750 guineas for a moiety.

Lord MANSFIELD.

What the neat rent?

Mr. WEDDERBURN.

The neat rent payable. The old lease stood at four hundred guineas a year and four puncheons of rum; Mr. Vaughan gave the same. The salaries formerly paid did not exceed £.100, Mr. Vaughan paid £.1200 a year to the officers executing the offices in Jamaica, and he has now taken Mr. Richardson's and Mr. Tufnell's moiety at 750 guineas. So stands the situation of this office, and also the facts respecting the application to the noble duke. The office itself, is an office that, to a common understanding, should seem the most likely to be a saleable office. It had been granted to people who never were to do the duty—to one man who was not in Jamaica, in trust for another who never was to go there: it had been sold by a decree of the court of Chancery; had been demised for years, passed by devise; and had suffered every change that is incident to alienable property. Mr. Vaughan after this, received a message (the latter end of July) from the noble duke by Mr. Sharp, to acquaint him that the affair had been taken up in a serious view; that he considered it in a very odious criminal light, and intended to commence a prosecution upon it. Mr. Vaughan desired to have a copy of what he had sent to the noble duke, not having taken a copy;—and after some time he procured it. A long conversation passed between Mr. Sharp and him; expostulations on Mr. Vaughan's part and the state of his own conduct, unnecessary to be minutely stated—the affidavit when it comes to be read will set it forth.—In the beginning of August, Mr. Vaughan (thinking himself bound on account of his affidavit, and) having never mentioned it to any one creature, there came out in the public news-papers two letters, each of them given to the world as containing in substance the letters of Mr. Vaughan, and accompanied with abundance of reflections upon him. From that time, for the space of two months, the matter was worked up with every possible aggravation against Mr. Vaughan.—Now it is remarkable, that the charge conveyed against Mr. Vaughan by these publications is not the offence of corrupting the



the noble duke, now imputed to him; but the matter laid to his charge, with a view to injure him with the public, is of a very different kind—Mr. Vaughan is made to say, That he begged pardon for the measures he had taken, and that he would behave better for the future. The total renunciation of all former principles is the charge meant to be conveyed, and whoever wrote the letters wrote them with that view—not to affect Mr. Vaughan for that which he hath done, (whatever opinion may now be held in that respect) but to affect Mr. Vaughan for a thing he had never done—the making a sacrifice of his former principles. Mr. Vaughan in one of these letters is made to say, That he was ashamed of the principles and the people he had been connected with. Whatever merit or demerit there may be with respect to that cause, it would have been improper for Mr. Vaughan to treat it as a shameful cause in any letter to the noble duke, when he knew that many noble persons (the duke's intimate acquaintance too,) were engaged in that cause long before him,—and some of them not ashamed of it. Therefore it was not probable, Mr. Vaughan should say he was ashamed of it;—but the public often swallow things not probable. Thence arose the censure upon him, Whether a man's principles are well or ill founded, still they are his principles; and a man who, upon interest without principle renounces them, is highly contemptible to the world.—Mr. Vaughan was run down upon that account, not upon account of the charge against him, but for a matter that he never was guilty of;—which was obtruded upon the public by publishing letters he never wrote.—Your lordship will permit me to make one or two observations upon the motives of Mr. Vaughan's conduct, before I come to state the legal grounds in his defence.

And it appears in the first place to your lordship, from all these facts, he has acted a weak, but not a wicked part; nothing can be more simple than the conduct of Mr. Vaughan, if he meant to succeed with respect to the office. It is not the conduct of a man trained in corruption, skilled in the art of offering handsomely and safely; it is the simple, artless, ignorant conduct of a man alarmed with respect to his interest,—very apprehensive that money was operating against him, and thinking it was a thing very much of course that he should counteract that,

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by



By the same means. It is precisely the conduct of the person at Lynn; who wrote a letter to lord Hardwicke with a bank note to him, and desired a decree in his favour.

Lord MANSFIELD.

He asked him to give his opinion upon a will.

Mr. WEDDERBURN.

Lord Hardwicke treated it as an idle proposition.—He informed me that he had received many absurd letters which he had thrown into the fire;—but he could not throw the bank note into the fire. He mentioned it in court—the man was ordered to attend, which he did, a good deal alarmed—the bank note was given to a public charity, and there the matter dropped.

Lord MANSFIELD.

Lord Hardwicke said it was necessary, as the money came with it; tho' he was convinced, as well as every body else, that the man's head was wrong. He was asking his opinion as a counsel. His lordship took that opportunity to let the world know, that if ever money was sent him, it should be made public in twenty four hours. Mr. Charles Townsend who was his counsel, spoke very well to it, and he had a consent from him that the money should be given to public charity—that was thought punishment enough.——The man was wrong in his head.

Mr. WEDDERBURN.

The act appears equally silly in Mr. Vaughan's case; and his conduct has not a trace of cunning or artifice in it; but shews rather the utmost ignorance of the world. It is not a reflection upon the noble duke to say, That persons in his grace's situation must be exposed, from their courses or life—from their amusements—and from people who will be prying upon every unguarded moment, to many opportunities for such an application. Had Mr. Vaughan been a designing man, he might have suggested this to the noble duke ten thousand ways, that would not have exposed him to any hazard. There are many methods of feeling the ground cautiously, and of prudently making the application, to see whether it be acceptable or not;—but Mr. Vaughan reasoned thus: (he knew it a saleable office) I know other offices have been bought and sold---I don't know, why that may not be as well sold to me as to others. The affidavit annexed to the letter



letter is no evidence of guilt; but indicates this only—he was afraid that the name of Samuel Vaughan would shut out all the ends of his application. His object then was to assure his grace, that he meant no trap. What then is the fair amount of this guilt? He has been guilty of the offence of suspecting the integrity of the noble duke. I would say to the noble duke, The suspicion is extremely injurious,—there is no ground for it;—but consider the man's situation,—the course of life he has been in;—consider the ideas he entertained with respect to that office;—and your grace will find the application, tho' not justifiable with regard to you, is excusable with respect to him:—he has been exceedingly mistaken;—but your honour may stand unimpeached, if the application is treated as idle and ridiculous.

It is an idea at the east end of the town, that a great many offices are sold; they are mistaken in it. We that live a little on this side Temple Bar know none are sold. At St. James's they don't even suspect, that it is ever supposed that any office is sold. The citizens however believe there is such a thing—they have run away with such a prejudice—a prosecution will not convince them of their error, nor prove that they are wrong. What then remains with regard to Mr. Vaughan's suspicion? One might say, without any incivility towards the noble duke,—consider what conduct would become a lady who values even the delicacy of her reputation. A talking virtue is a suspected virtue; the woman, who boasts of the temptation she has resisted, shews that she thought it a temptation; and the world will say, that she objected to the person, and not to the proposal.——If your grace disregards this totally, the world will think more nobly of you, than to believe there was any ground for Mr. Vaughan's suspicion.——You are discharged from it. But perhaps it might be said, this is a troublesome man;—it would be well to expose Mr. Vaughan,—to run him down among the people. But that is not an object worthy such a pursuit.——Do not, by aiming at Mr. Vaughan, forget what is due to the delicacy of your own situation.

It will weigh with the court that this is not the act of a cunning, artful man. It is the act of a simple, ignorant, credulous, deluded man, pursued weakly, and con-



ducted in a manner that indicates no danger from such a man's attempting to corrupt; he is too ignorant of the common modes that every third rate agent at office would have taught him. If no traces of art or design appear, there is no object for a prosecution. But I go upon the fact into another consideration, that I hope the court will think merits some attention.——Supposing for the present that this was a case, on which in point of law, the court could grant an information;—there is no such case in which the prosecution may not be carried on in another mode, by indictment. Is it fit in this case that the court should interpose by way of *information*? Does it come fairly? When all the news-papers have been filled, for months together, with calumny upon Mr. Vaughan, not charging him with a true offence, but with a supposed offence, to prejudice him in the mind of the world? Mr. Vaughan observes a religious silence upon the subject; he swears that he communicated to no person living, either the affidavit or letter. It must therefore remain, that the publication comes from other hands. Is it fit, when the opinion of the public has been tainted upon false grounds, (for false they are in this cause) to make Mr. Vaughan suffer for a crime he never committed? Is it fit for this court to make him suffer by an information, and to add that, to all the prejudices which have been propagated against him? If he should be convicted, it might be because he was supposed to have forsaken the Bill of Rights; not for what he has done. I will therefore submit to the court, they cannot grant an information under such circumstances.—If this matter was intended in the month of July to come before a court of justice, those, who are in possession of the materials which charge Mr. Vaughan, should have taken great care that no improper charge against Mr. Vaughan,—no charge at all indeed,—should have come in the news-papers. I submit to your lordship, that it is very wrong after this, to apply to the court of king's bench to add the prejudice, that arises from their opinion, to the already prejudiced opinion of the public.

I come now to consider upon what ground in law this prosecution can be supported.——My lord, I take it, it is necessary here to state precisely the offence imputed to Mr. Vaughan.—The offence imputed to Mr. Vaughan  
is



is simply this;—an offer (and no more) to the duke of Grafton to tempt, as the affidavit states, by money to procure an office in the colonies concerning the administration of justice. This is the state of the fact which is presumed to be an offence;—an offer of money to tempt his grace to procure an office in the colonies.---It is then no more than a solicitation to do an act from an improper motive.—Before I consider, whether solicitation will constitute of itself a specific and independent crime, I shall first examine, whether the action if done would be the subject of a prosecution; for the solicitation cannot be criminal, if the act done would not expose the person to any prosecution. If it is an offence punishable here, it must either be by statute or common law: and I suppose it will be admitted, that there is no statute, that has the least relation to this subject, but the 5th and 6th of Edward VI. That statute I conceive to be a local regulation of the police of this country, with respect to the offices enumerated in it; and that it no more refers to other countries, than the statutes of usury, the statutes against excessive gaming, and many other laws, that are considered as regulations of a local police. In the first place, the statute contains no prohibition—to buy and sell offices within the statute of Edward VI. is not prohibited. It does not say,—No person shall buy or sell an office; but it says,—If any person shall bargain, &c. for an office, the person selling forfeits it,—and the person buying is incapable of holding that specific office. But I shall enter more fully into the comment upon this statute hereafter. I need not in this part of the argument enter into it. The single question here is, Whether this act has reference to the colonies or not? This question has been agitated, debated, and decided in Westminster hall. It is expressly held, That this act does not extend to the colonies, in the case of Blanchard and Goldy 2d Salkeld 411, 4th Modern 218. There the very point in judgment before the court upon a demurrer was, Whether this act of the 5th and 6th of Edward VI. did, or did not extend to Jamaica? It was an action of debt upon a bond. The defendant prayed Oyer of the condition of the bond; and it appearing to be to secure a sum of money given for the office of provost marshal in Jamaica, he pleaded the statute of the 5th and 6th of Edward



Edward VI. The plaintiff replied to the plea, The statute did not extend to Jamaica;—the defendant rejoined, That it did. The case, as I state it, is reported shortly in Salkeld. The pleadings, and the argument at length, are in 4th Modern. The court gave judgment for the plaintiff. By the pleadings it is clear, that it could not go off upon any collateral matter, and that the court positively determined the statute did not extend to Jamaica. The only difference between the two reports is this: The case in Salkeld treats it as a sum of money for the purchase of the office of provost marshal;—the case in 4th Modern shews it to be a bond to pay a gross annual sum (not out of the profits) for the deputation of the office. But it makes no difference as to the question. For if a person makes a deputation of an office within the statute of Edward VI. for an annuity, without saying “out of the profits arising,” it is void by the statute. If the reservation is of an annuity out of the profits, it is not void within the statute. The distinction is a little nice, but it is settled.

Lord MANSFIELD.

It is certainly so.

Mr. WEDDERBURN.

But a sum of money secured in gross without adding —“out of the profits”—makes it void within the statute. That point is determined in the case of Godolphin and Tudor, 2d Salkeld 468.

Lord MANSFIELD.

But that will turn upon the question, Whether it was really out of the profits, or colourably only?

Mr. WEDDERBURN.

The case I have cited does not turn upon that distinction, but that it is a sum in gross without saying “out of the profits;” and therefore within the statute. There are no arguments about its being colourable or not.

Justice YATES.

I don't see it is a hair-breadth distinction at all. If the reservation be only “out of the profits,” the party is not obliged to pay the money; but, if there is a sum certain, he is bound to pay it.

Mr. WEDDERBURN.

I was not considering the merits of that case of Godolphin



dolphin and Tudor. I only meant by citing it, to shew your lordship that the case as reported in 4th Modern, tho' it varies from the case in Salkeld, comes to the same point exactly. The bond in either view was undoubtedly void; therefore it is the same thing on both the reports, and it is settled, that the statute of the 5th and 6th of Edward VI. does not extend to the colonies. But that is an office in the colonies, and the court of king's bench have determined that it is not within the statute. It is an adjudged case which Mr. Vaughan proceeds upon, that the leases under which he now holds, and under which it has been held from time to time, were void, if the office was within the statute; for the rent reserved is not out of the profits, but a sum in gross. The parties understood, that the act was determined not to extend to the colonies; and therefore have reserved the rent in this manner. It is not the case of Mr. Vaughan's office only, but also of the office of clerk of the supreme court of the Leeward Islands;—and I could produce to your lordship ten or a dozen of these offices, that are held beneficially by persons in England, where a rent is reserved in the same manner, taking it for granted that the statute did not affect them.

Lord MANSFIELD.

Is any thing reported in 4th Modern, of the argument on which the court decided?

Mr. WEDDERBURN.

The ground the court goes on is,---That Jamaica is a conquered country; that it had therefore no laws from this country, except by positive statute.

Lord MANSFIELD.

As being not a colony planted, but a conquered country; and not a bad argument neither.

Mr. WEDDERBURN.

It is not necessary for me to support the doctrine of the case. I quote it as a positive case in point. If it were proper to go farther, I could refer your lordship to the argument of lord Sommers, and the attorney general Treby in the case of the duty levied at Jamaica; I could remind your lordship that the laws of Jamaica were granted for a term of years; that it was the current opinion of the times that Jamaica had no laws upon the expiration of that term, and was not governed by the laws of  
this



this country;—but that is foreign to the present purpose. The case cited is in point;—I have no occasion to go farther;—all the arguments upon it are mere matters of curiosity. It is a case determined that has never been reversed; and upon that case I contend,---that to buy and sell an office in Jamaica, tho' touching the administration of justice, is not within the statute: nor can the policy of that statute make the solicitation an offence. Is it then an offence at common law?---In this enquiry it will be necessary carefully to attend to this (which I apprehend to be an eternal) distinction in the law of England;---there are acts dishonourable, there are acts immoral, there are acts illegal which are distinguishable from punishable. *This country is a country of positive law*; no court has a censorial power. No man is to be punished because he is a bad man. The legislature only can create offences; there is no criminal law *ex arbitrio judicis*. The fraud of a man's actions will not make him an object of punishment; unless an act is done that is not only immoral and illegal, but in itself punishable. Fraud, breach of trust, how bad so ever they are, are no objects of positive punishment. I shall without any difficulty, if the gentlemen on the other side desire it, admit, that in all cases in its utmost extent to buy and sell offices is dishonourable. If they press the argument so far, I have no scruples to conceal it,---but I don't assert it: because I know I shall be throwing a censure very unjustly upon many respectable people, who in selling offices do not think they are doing any thing dishonourable. A saving in a statute, or a prohibition in a statute, will not affect the question of honour or dishonour in the act. I will therefore admit, that in all cases to buy and sell offices is not honourable. But my lord, that it is always immoral, I shall not admit. If an improper man is put into an office, for the mere consideration of a sum of money, it is immoral;—the public is injured by it: if a proper man, the public is not injured; whether the motive for his employment be friendship, or relation, or a connection with a servant, or a connection with a mistress,---whatever channels of recommendation are used, it is the same to the public. The fitness of the man, not the motive of his appointment, is the public concern. A good man wishes to have an office---he has no access---  
other



other people have the advantage of indirect channels of application---all the moments of ease, of access, are occupied by others. What does this man do? He will rather pay the money;---he thinks it better, than to flatter or besiege the idle hours of any great man;---he offers his money at once:---if he is a good man, if the duty of the office is well discharged, the public have no business to enquire into it. Every man is promoted to an office from some motive or other. I don't presume we live in so perfect an age, or that the world has ever been so perfect, that men are always promoted to offices merely for their sufficiency. There are different causes,---particular acquaintance,---some biases or other unknown to the man. Money may be an operative motive; but if money is not the inducement in the abstract, it is not immoral. I go farther when I advance that it is not unlawful. Need I prove it is not unlawful, without the aid of a positive statute? the contract quoted in the case in Salkeld proves it; ---judgment was given for the plaintiff, whether the act extended to Jamaica or not. If the consideration was unlawful, the court could not have given judgment for the plaintiff. Had it appeared upon the face of the pleadings that it was an unlawful act, the plaintiff must have been non-suited---the bond appears upon the pleadings; therefore it was not an unlawful bond. This is enough to shew it not unlawful. But even supposing it unlawful, there is a wide difference between an act unlawful so as to make a contract void, and an act criminal and punishable. There are a thousand acts which are immoral and unlawful, that yet will not subject a man to any punishment. My lord, I have hitherto reasoned upon the subject, as if it was matter of argument; but when a question is---what the common law says upon a particular subject---the enquiry is rather a matter of fact, and I may put it upon the other side to point out the law. There is nothing in common law, that is not established either by usage or positive authority.---Prove that there is an instance where a man has been punished for such an offence. If it had been the common law of the realm, men would have been punished for it;--shew me any indictment at common law--any opinion in any law book--that to buy and sell offices is a punishable crime.

I

Mr.



Mr. Justice YATES.

Have you read Hawkins and lord Coke?

Mr. Justice WILLES.

Have you looked into the case of Stockerville and North?

Mr. WEDDERBURN.

I hope I have looked into all these books. Lord Coke confines bribery, to bribery of the judges. That is an offence at common law; but confined strictly to judicial bribery. Hawkins in his whole chapter upon it, and a book as good as Hawkins, the late commentaries on the law, confine it to persons in a judicial office, ---that is an offence at common law. The reason is very obvious. As to the buying and selling offices,---there is an allusion in Hawkins to the case of Stockerville and North (Moor 781.) That case is clearly upon a statute, and as totally irreferable to the question at common law, as any one case in the book. In the first place, it is a star chamber case, and therefore not a very certain authority; but, without that observation, in the next place it is an action brought against the sheriff of Nottingham, for letting his gaol to farm, upon the statute of Harry IV. That statute is the ground of the prosecution. What does the court of Star Chamber do upon it? It is proved that the defendant let his servants receive the profits of the gaols; it is held, that, that was in effect letting his gaol to farm, and he was fined upon it. That is the fact which gave rise to the judgment;---but does that prove it an offence at common law? It is grounded upon a particular statute. The reporter indeed adds a note, "That the statute gives a certain penalty, and it is not fineable, &c. but the court took it, that much corruption ensued upon coveting the office; that this putting the offices to farm and sale was an offence at common law; and therefore fineable." My lord, this is the note of the reporter, and his note is grounded upon this evident mistake:---His idea is, that the judgment could not be supported upon that statute, because the statute gave a certain and pecuniary penalty; and therefore, that the court went upon the ground,--that it was fineable at common law, &c. I have looked into the statute--the reporter is totally mistaken;--the statute is merely prohibitory. It is not with a certain and pecuniary penalty; the prosecution



secution could only be by indictment, and the party could only be fined: therefore all this confusion of the case of Stockerville and North arises from a mere blunder of the reporter adding his own foolish note to the case, as it originally stood determined. But the case itself proves nothing; for it is an indictment upon the statute--that statute is prohibitory without penalty; and the man is fined upon it.

Lord MANSFIELD.

That is the very answer given in lord Macclesfield's trial.

Mr. Justice WILLES.

You stated from Moor, but it is also in Noy.

Mr. WEDDERBURN.

It is in Noy likewise. It is short there. Noy was not a good reporter.—Noy copied Moor.

Mr. Justice YATES.

He was a very imperfect reporter,—what are called Noy's reports are not Noy's,—they were serjeant Grey's, I think.

COUNSEL.

They were no very great credit to any body.

Mr. WEDDERBURN.

I say negatively, there is no case, there is no indictment that proves this an offence at common law; but I go farther, the statute of Edward VI. positively proves it no offence by common law---the 6th section of this statute provides, that nothing in the act shall extend to any gift, grant, &c. of any office or deputation made before the 1st of March ensuing; but that the same shall continue in such force, strength and effect, as if this act never had been, or made.---But does this act except contracts before the 1st of March ensuing, or future contracts, if they were not illegal and criminal? Can that act give it such strength, force and effect?---Does that mean to proceed upon a principle that the thing was illegal? Your lordship sees obviously the act was made when many such contracts were existing; the act prohibited the same for the future, to commence at a distant day; it left all the contracts to stand, as they did before the commencement of that statute. My lord, the act goes farther; for it concludes with saying, Nothing in it shall be prejudicial to any of the chief justices, or justices of assize; but that they, and



either of them, may dispose of any office disposeable, as it was before. Does this shew it was considered by the legislature as a crime? Could it happen that the act of Edward VI. should leave it to the judges of assize to commit a crime at common law? My lord, custom will not make their acts innocent, if criminal at common law. Your lordship will permit me with great submission to contend,---that if it is criminal at common law, it is criminal in the chief justices and judges of assize, (upon the general principle that the transfer of offices for money is dangerous to the public) and therefore upon account of its danger, the action shall be punishable,---the act could not mean to except their case. But I don't know any act punishable at common law merely on account of its dangerous tendency. The law in this country is, in criminal matters, a positive law. An act that is to the direct injury of any person, or number of persons, may be criminal at common law. An act that is only by its consequences liable to produce public dangers, I apprehend, is not. If it is, it must be upon some general ground that applies to all such cases. Custom will not vary the nature of the case; it is upon the immutable quality of the act, that it must be supposed to be punishable at common law: but that immutable quality (if it exists) attends the chief justices and judges of assize in their offices as much as it does other persons. This proves, that the act did not deem all transactions for the sale of offices illegal; but it was enacted with regard to certain offices, upon the particular motives of danger to the public, and therefore under particular penalties, it was to be restrained, *viz.* The forfeiture of the office to the seller, and the incapacity to hold it with regard to the buyer---and beyond the offices specified, the act does not extend. My lord, the sale of offices, in general not excepted, has not been understood to be *immoral* under *all* circumstances: it has not been understood to be *unlawful*, even tho' they concerned the administration of justice. It would be impossible to argue otherwise in Westminster hall. *Are not all the offices of the rolls, &c. saleable, and are sold?* And it is no argument, that those offices, &c. are saleable by virtue of the particular reservation in the statute. It can't be so---the saving is only to the chief justices and judges of assize. *The offices of the rolls concern the administration of justice,---the offices in the court of exchequer, and in the six clerks office, ---those*



---those offices have been sold;---they are not in the proviso. If there is any idea that the sale of offices be criminal at common law, I should be glad to see an experiment tried, not upon a sale of office in Jamaica, where the statute has no effect, but tried upon a sale of offices in the exchequer, at the rolls, in the six clerks office,---whether they are saleable, and the sale punishable---they concern the administration of justice, *they* fall within the general words of the act; but not within the proviso. I take it, there is no principle of common law will extend to say, That the buying and selling of offices is unlawful. That it may be made so by positive law, is undoubted; and that this statute has made it so with regard to particular offices is certain: and it is certain that this statute, grounded upon particular convenience for the local police of this country, cannot be extended to offices in the colonies. And the consequence is clear with respect to this office. My lord, I have argued that an act in itself punishable, must be so by common or statute law; and that neither of them extend to this case. Give me leave to suppose the position to be true;---that it is punishable at common law as a misdemeanor to buy or sell offices: the question then will be, Is the solicitation to do the act punishable? to solicit a person (the act not done, and the public not affected by it) to do an illegal act, I take it to be by no means in all instances punishable. To solicit a man to commit a felony, is to counsel a felony; tho' the felony is not committed, the solicitation is a misdemeanor: but will that hold in this case? Upon what ground can it hold? we can easily see the ground with respect to felony---the public security is so deeply concerned to prevent the commission of felonies, that it is necessary (in order to put all guards and checks against the frailties of men in that respect) to use preventive remedies. In other cases, (not felonies) if solicitation attacks a man, he must resist. I can't form to myself the idea of a misdemeanor, the solicitation to which (the act not done) will constitute an offence. I have looked for cases, and I find but one case, where solicitation to a misdemeanor subjected the person to punishment. The case was the solicitation of a witness to give evidence, no actual perjury committed. How far that may be punishable, as a contempt of court, by tampering with a witness, is another question. Whether punishable by indictment or information?---was the question  
upon



upon this case. I will state the case, (perfectly convinced the gentlemen will not state it so fully as I shall) 2d Shower, f. 1. The king and Johnson, A deed was produced by lady Ivy against Dr. Whitchcot's lady and her tenants; the defendant at a trial denied it to be true; the jury found a verdict for the plaintiff. Johnson who was her attorney, agreed with another person to give him £.350, to prove the deed was forged;---it was not done; but he was found guilty. Mr. Pollexfen moved in arrest of judgment, that he was found guilty of no crime; that to bring a witness to prove a fact which was true, was no offence; it might be tampering with a witness; but it was not an offence indictable. The court gave their opinion; and Sir Bartholomew Shower, then a practitioner of eminence, adds his observations upon the case. First, Mr. justice Jones said, That witnesses ought to be free, and not affected with money; but he said this was no subornation of perjury; here is no perjury committed, no act committed; for subornation of perjury the statute gives but £.40: then after stating that,---you will be surprized to hear how he concludes,---this is not so great a crime as that, therefore I think £.40 fine enough. The conclusion does not agree very well with the premises; his argument is first, That it was no offence; then that upon a greater offence that statute gives £.40 fine; therefore he thinks £.40 fine enough for a less.--Wyld--My brother Jones's opinion sways with me as to the penalty of the statute, therefore I think £.50 fine enough, to which Jones consented, for agreement sake.---Twisden---I must go according to what the jury finds; therefore I am for 500 marks, surety for good behaviour, and strike him off the roll. Lord chief justice Scroggs said he was for £.500; and before this, to prevent a lesser sum, he made a long speech to aggravate the crime, and then concluded it was in imitation of the divine law, that the court would proceed\*. Sir Bartholomew Shower makes this reflection----Johnson died soon after, much lamented, and without reproach: every one thought this a hard case, and this crime was committed in order to detect a forgery of lady Ivy's; which in a trial at the king's bench bar twenty years afterwards was proved. And note also, that that cause was tried in the king's bench while he was a serjeant.

\* Note, Johnson was <sup>at</sup>orney in prosecuting Scroggs for a debt, while a serjeant.



Lord MANSFIELD.

The note, you have given an account of ---- is very inaccurate and imperfect,---it was a great while after the cause.

Mr. WEDDERBURN.

No, my lord,---Sir Bartholomew Shower's reports were *published* long after; but your lordship knows Sir Bartholomew Shower was a practising council of great eminence in that time.

Lord MANSFIELD.

Certainly,---but he took the note down long after.

Mr. WEDDERBURN.

The trial of the forgery was not long after. Lord chief justice Jefferies tried the case at law.-----The civil action between lady Ivy and the dean and chapter of St. Paul's. Upon the trial of that cause, the deed was laid hold of, and the trial for forgery came on.

Lord MANSFIELD.

It must have been two or three years afterwards. That was published in the reign of William, or beginning of Anne. There is in Shower the famous argument upon granting informations on the third of king William---(there are a great many arguments besides in Shower that occur to me)---that celebrated argument of his own, which he never made.

Mr. Justice ASTON.

Tho' this is called the 2d Shower, it contains cases anterior to those in 1st Shower.

Mr. WEDDERBURN.

They are very improperly titled. I have stated the case to your lordship. The book will speak for itself. [That case stands solitary, if it was a good case---there was a contempt of court.] If solicitation to commit a felony shall be punished as a misdemeanor only, it does not appear to me necessary for the public security, that to solicit a crime, which is of itself but a misdemeanor, should be punished as a misdemeanor.---I will venture to say, if it was punishable, the security with regard to the public would be extremely slender. Indeed I will venture to say, that no prosecution would ever be set on foot, except in the case of a very obnoxious man. The cautious did, and ever will, in all cases escape; and it will be a question al-

ways



ways to try the man, and not the merits of the cause. If such a rule was laid down, that solicitation, without any act following upon it, in cases of a misdemeanor was to have punishment follow upon it, then all dangerous solicitations would remain unknown,---all idle ones would be objects for information, and they would be more against the man than the case, and the court would be made an instrument of resentment, not a court of justice. If a man advises a nuisance in the highway,---to dig a pit. This is a misdemeanor, and he is punishable for it. How? indict him!---the principal is but indictable. If one advises a man to beat such a one, the principal may be indicted for a battery; but is the man that said, I think you had better beat such a one to be indicted for counselling him to it? I have no such idea; the only case that can be gone upon, will be the idea, that something like this has prevailed in the case of bribery at elections. I take it no such case can be produced;---the only case I have seen was a question before the court, Whether a promise was the same thing as a gift? Whether the bribe has taken the corrupt effect or not?---that has been offered to your lordship with regard to bribery. The court have held a promise, the same thing as a gift---and whether a person hath voted in that interest or the opposite, it is the same thing. The consequences, whether the bribe was beneficial to the briber, the court does not regard; but I think a very clear distinction may be drawn between all these cases and the present. On the whole, the defendant ought not to be prosecuted by an information, if there is even a foundation in law; or many particular circumstances relative to the parties: and the transaction, (in itself) to buy and sell this office is not an offence against the 5th of Edward VI. much less is it an offence at common law: if it was so at common law, still it is going very far indeed in a country of confined and positive criminal laws, for a court to say, That a mere solicitation is punishable as a culpable intention, and shall be drawn into matter of criminal charge, when no act has been done by which the public have been injured. My lord, upon these grounds I hope you will be of opinion, the rule should be discharged.

Mr. Justice YATES.

I only mean, if there should be any distinction, that you may have an opportunity to answer it, whether the  
cases



cases you have mentioned of solicitation are from others to commit a crime.-----If it was an offence to obtain an office by bribery, then it will not fall under the idea to solicit and tempt another to commit the crime.

Mr. WEDDERBURN.

If I had stated that fact to be so, I should then have contended it was a bad intention. It was an attempt to commit a crime not perfected; and there I should argue that there is no instance, that an attempt to commit a crime is punishable as the crime.

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*THE affidavit of the duke of Grafton, with the three paper writings A, B, C, thereunto annexed, the affidavits of Mr. Baldwin, Mr. Reynell, Mr. Pollock, and Mr. Vaughan were severally read.*

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Mr. LEE.

I AM of council on the same side with Mr. Wedderburn, who has gone so minutely into all the circumstances disclosed by Mr. Vaughan's affidavit, that I shall confine myself to the question,---Whether this is a cause, which in point of law this court can take cognizance of? I shall first consider Mr. Vaughan's application to the duke of Grafton, as to a person who had a power of disposing of this office. With that view undoubtedly Mr. Vaughan applied to the duke of Grafton; he supposed that he had a legal power of bestowing it: the question therefore is,---Whether Mr. Vaughan's application to the duke of Grafton was an offence by the common or statute law? I don't find by the search I have made into this matter, that this proposition is asserted by any writer of authority---that the sale of an office is *malum in se*, or a crime at common law. The case reported by Noy is certainly a mistake of the reporter, copied from Moore's account of the same case, which assigns a reason for the judgment that is false and impossible. The words of the book are these; "Note, that the statute of the 4th Harry IV. gives a certain and pecuniary penalty." In looking into the act of parliament, it appears there is no certain or pecuniary penalty at all; the whole is a mistake; and the law containing a general prohibition, only gives the remedy by indictment. This report being to be laid out of the case on account of the inaccuracy of the reporter, I have not been able to find this

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position



position in any one author,---That the sale of offices is an offence at common law.-----Hawkins, observing upon the statute of Edward VI. endeavours indeed to fortify the provisions of that statute by many arguments, drawn from reason and public convenience; but he has no where intimated an opinion, that it is an offence at common law. The statute of Edward VI. declares, That no man shall bargain for, or sell, &c. any office, or deputation of office, concerning the administration of justice, or any clerkship in a court of record; (which is perhaps more to the present instance) yet the statute does not make it criminal---the party buying is incapable of holding that particular office, and the party selling shall lose his nomination for that time only. Besides, there is a provision in this act, that it shall not extend to any contracts or securities made for any of the offices enumerated, provided they are entered into before the first of March next coming; so that your lordship sees this statute, which is supposed to inflict a proper punishment upon a *malum in se*, is a direct recognition of such bargains for a future limited time. The statute says, They shall have the same strength, force and effect, as if the act had never been made---these are the words of the provision. The next proviso in that act declares, It shall not be hurtful or prejudicial to any power in the two chief justices or judges of assize; but they are indulged in the liberty, they have always exercised, of selling offices like the present. Now, my lord, is this the language of an act of parliament, meaning to prescribe under severe penalties an offence at common law? Is it to be conceived, that if this was criminal in itself, the supreme offices of justice (*the purity of whose characters, the legislature is, and ought to be careful to preserve*) would be suffered at all times to commit this clearly illegal and criminal action? the supposition is impossible. But I apprehend, this construction of the act of parliament is much strengthened by the case of Blanchard and Goldy in 2d Salkeld; which was an action upon a bond given for the office of provost marshal in the island of Jamaica. The point determined by the court, is only that Jamaica being a conquered country, and the law not having been given by the king to Jamaica, the statute of Edward VI. did not reach thither. But your lordship sees, if this was a crime in itself, the bond being given for an illicit consideration,



deration, there never could have been judgment for the plaintiff upon that bond. If it was a corrupt and vicious agreement, whether the act of parliament extends to Jamaica or not, the bond must be void. I conceive therefore, that when the court suffered the plaintiff to recover, they not only in express words held, that the statute did not extend to Jamaica; but they virtually affirmed the legality of the consideration. These are the observations that occur to me upon the first head of argument,----supposing Mr. Vaughan to have applied to the duke of Grafton, as a person having authority to give him this office. But it appears from the affidavits before you, that the duke of Grafton had no such power. The office is not in his gift; it is in the king's gift, and not the duke of Grafton's: it is so stated in the affidavits, upon which the rule is founded.----This court, tho' it has been called the *custos morum* of the king's subject, exercises its criminal jurisdiction, not *pro salute animæ* upon principles of casuistry; but for the preservation of the public good, and that the community receive no damage.----Merely to amend the morals of men is the province of another jurisdiction. I will not say, that an ineffectual attempt to excite another to commit a misdemeanor is always innocent. I take the law to be otherwise in attempts to pervert the immediate administration of justice. An endeavour to persuade a man to swear falsely, is an offence in this court: Hawkins says it certainly is so; and, in a case in Comberbatch, reports, lord Holt expresses himself thus,---“Subornation of perjury cannot be but where the perjury is actually committed; but I have known a man stand in the pillory, for endeavouring to suborn; for it is a great offence, and punishable by fine and corporal punishment.” A fruitless offer of a bribe to a judge, lord Coke says, is punishable; but it is observable, that he confines his idea of bribery entirely to persons in offices judicial. It is part of his definition, That bribery is only where a person, having a judicial place, shall take a bribe; whereas extortion may be by a person in a ministerial office. The only cases I recollect of criminal solicitations to commit misdemeanors, are such as immediately and directly affect the administration of justice. I have before mentioned, that I do not conceive an attempt to procure an office, is indictable as a misdemeanor at common law:---but, my lord,



supposing it were, yet there must be an ability to commit that offence, so as to cause that danger to the community, upon which the jurisdiction of this court attaches. Suppose, my lord, a man was to give or offer a person, not a freeholder, 500*l.* to vote for a knight of the shire,----I should conceive that would not be punishable. The statutes against bribery will not reach it, and wisely extend no farther than to persons having or claiming a right to vote; because from such only, danger can be apprehended. In subornation of perjury, if a person was to suborn a wife to give evidence against her husband, when, by law, she cannot be evidence against her husband, I should presume upon the principles of common law this would not be a misdemeanor, however great an offence in point of conscience. I expect to hear the gentlemen on the other side quote the case of King and Plimpton, (reported in the 2d lord Raymond, 1738.) That case was an information against a person at Tiverton; for that he, intending to subvert the liberties of Tiverton, did solicit, tempt and excite A. B. to vote for C. D. as a mayor, by giving a promise of 500*l.*---that is the charge. I beg leave to observe, that this is a promise accepted; the law knows no promise till acceptance.----And this was upon a motion after verdict.

Lord MANSFIELD.

After verdict makes no difference in a criminal thing.

Mr. LEE.

I should think it must be understood a promise accepted; but in this case one of the exceptions taken is, That it was sufficiently alledged that the party had a right to vote. The court gave judgment upon the point, that it was sufficiently alledged. My lord, I take this to be an authority for the necessity of that circumstance; and that, in order to make the offence bribery, there must be not only an evil intention on the one side, but an ability to commit the offence on the other. In the very point of bribery, my lord Coke, who in that chapter is extremely accurate, seems to point to that distinction. He says, (in the 3d Institute, p. 148.) “ If the ordinary, having power by “ the act of Harry VIII. to grant administrations to “ the widow or next of kin of the intestate, takes any reward for preferring one before another, it is bribery.”



Now if that was not essential to the offence, lord Coke would hardly have been at the expence of two lines about it, merely for the sake of conveying an idea that was nothing to the purpose. He does not say, If the ordinary prefers one person before another, it is bribery---No---but, If he, having power by the statute to grant administration to either, at his election prefers one for money, that is bribery; because from this power arises the danger to the public. Upon the whole, I submit it to your lordship, that the question is not,---Whether Mr. Vaughan has done a thing like or unlike a gentleman? but whether there is a legal foundation for an information against him? and whether the circumstances of the case be such as make this extraordinary interposition of the court proper? I conceive it comes before the court under circumstances very peculiar. I will suppose Mr. Vaughan, before he had made the offer to the duke of Grafton, had argued with himself, whether this was a thing he could innocently do. If he looked into the laws of his country, which every person, lawyer or not, is supposed to do, he finds not a syllable against it; he finds an act of parliament calculated to restrain the practice of bargaining for offices; but he finds in the best books of law, that this act of parliament does not extend to his case. Hawkins says, (in title *Bribery*) after reciting the act of Edward VI. very fully, “ Under this statute four points have been resolved, the  
 “ last of which is, That it extends not to offices in the  
 “ plantations.” This is expressly stated to have been decided upon the statute. If he finds no statute prohibiting his conduct, nor any judgment of a court, it is very natural for him to conclude that his action is not penal. I will not undertake to say that Mr. Vaughan’s behaviour is not censurable; but there is a great difference between a thing morally wrong, and an act subjecting the doer of it to the criminal jurisdiction of this court. The representation which has been made to the public of Mr. Vaughan’s conduct, looks very suspicious and disingenuous. The duke of Grafton having the sole possession of all these papers, Mr. Vaughan swearing that he never would speak of it, and swearing now before your lordship that he never did---surely these are grounds sufficient to induce a suspicion, that Mr. Vaughan has not been treated with much candour by his prosecutor.---Suggestions have gone out in-

to



to the world very false, and representing Mr. Vaughan's conduct in a light a great deal more blameable than it was. ---It was undoubtedly a very improper thing, if the duke of Grafton, meditating any application to this court, had any knowledge or connection whatever with it.----I hope, my lord, not only upon the general principles of law, but upon the particular circumstances attending the case, that your lordship will be of opinion there is no ground for this information, and that the rule be accordingly discharged.

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Mr. SOLICITOR GENERAL.

MAY it please your lordship, I am of counsel in support of the rule.---I will truly state to your lordship, that I did not expect so much industry and learning was to be employed in the discussion of this question, at this stage of the business. The transaction imputed to Mr. Vaughan being a transaction well known, I hope I shall be excused for not following the gentlemen in the very wide field they have taken:---I think it not necessary, in order for obtaining the end for which I rise up; *viz.* that the present rule may be made absolute.---Mr. Wedderburn sets out in opposing the rule by considering, whether it is an offence either by common or statute law, or any law to attempt to corrupt the noble prosecutor for the disposition of an office of trust in the colonies, concerning the administration of justice. For the purpose of introducing that consideration, he begins, with observing that the prosecutor stands before the court under several circumstances of description. That he begins by describing circumstances of lenity. He says, to make such a proposition as this to the first man one meets in the street, would argue Mr. Vaughan a fool,---draw great ridicule upon him, and would deserve no consideration; because of course that man would regard him as a madman, and pay no attention to it. He says the noble duke's being a peer, will not regard but that it is perfectly innocent to make this proposal to him. I own it not necessary to enter into either of these questions; but I must be excused in saying I differ a little from the opinion the learned gentleman entertains, when he considers two other characters the noble duke stands under. In the first place, he is a privy counsellor,---are they undistinguished from people in the streets? can they do as little mischief, as little good? There may be such privy counsellors for what I know, ---that



---that proposition I don't enter into: this I know, (I have entertained a very considerable mistake at least if it is not so) that it is the duty of privy counsellors, whenever they shall be called upon, to give advice (whenever they shall presume at least to give it, if not called upon)—honest and disinterested advice. I hope I presume not too much, that when a privy counsellor gives advice under the corrupt motive and influence of a bribe, that he would not do right if he gave it under that motive. Then he proceeds to consider, how far his being first lord of the treasury goes. He says the first lord is no better than another lord, and the lord no more than another man; that there is no power to the lord of the treasury;—no more power to the first than others, therefore no power belongeth to a lord of the treasury.—I should conceive, if there is this sort of distinction in the privy counsellors, between those who can do neither good nor harm, and those who can do both, the character points upon that distinction, and that a privy counsellor who happens to be first lord of the treasury is not among those who can do neither good nor harm. I trust therefore in what remains, the court will not think it quite so proper, as the learned gentleman wishes it, and the *interest* of the argument requires, that those two characters of the prosecutor shall be laid out of the case in the question under consideration. Mr. Wedderburn himself seemed to assent, to give occasion indeed to that idea of distinction, when he said, the situation of the noble prosecutor may in truth, and perhaps is pretty well understood; that it is not specifically entered in the affidavit;—that it is not so brought before the court, as to cause the court to take notice of it. The gentleman mistakes perhaps a little the nature of the business where it is material that all these facts, which he takes notice of here, should be stated with precision. In this stage of the business it is supposed this court will not turn their eyes to that, which requires no proof any where else, or to any other point; or expect that to be stated, that every body knows. He and others have enquired with equal industry and without success, for precedents of this sort: he finds none; and presumes therefore that none such are to be found. Whether from thence he means to infer that the case is the first impression, as well as the complaint, which must then be the first complaint; or whether he means, that former persons have



have received this sort of application with different intentions and countenances---if it be so, to their dishonour be it. If this be the first application of the kind, it is to be hoped it will be the last. Mr. Wedderburn seemed to mean, that had it often been indulged, it would require the whole time of the court to discuss the questions arising upon them. Are these applications so frequent then? if they are, with deference to the better judgment of the court, in my apprehension the time of the court could not be better employed than in discussing those questions, which tend in their consequences to put an end to a practice, which, if permitted to pass with impunity, saps the vitals of the very foundation upon which the public weal is secured. How any advantage to their argument can be drawn from the supposition, that the crime is so frequent that the court has not leisure to correct it, because it would employ more time than the court have to employ upon it, I shall not pretend to say. It would, I think, be very sufficient for the time to be enlarged elsewhere, if this court had not time to discuss such questions. Mr. Wedderburn supposes, it is not fit for collateral reasons, that this prosecution come before the court.---Mr. Vaughan is a considerable and respectable merchant---but if he had been nothing else, the court would never have heard of this application. Perhaps I don't understand this proposition as the gentleman meant it; but it is certain, if Mr. Vaughan had confined himself to his own concerns, and had held no other conventicles but that of a merchant, he could not have been brought here in the character of a delinquent. It is in the single character of having, or being supposed to have committed a very serious offence, that he is called here to answer that offence; and, if he can defend himself to the satisfaction of the court, I shall not then go out of my way for the purpose of enquiring what other conventicles he has held elsewhere. Mr. Wedderburn proceeds here to state, what I suppose was proved afterwards by a very long affidavit---the nature of this sort of office. I did not from hearing this affidavit read, or attending to the state of it, observe, that there was much in it relative to this question, but that the office had once been sold under a decree of the court of Chancery.

Lord



LORD MANSFIELD.

There is no decree produced.

MR. WEDDERBURN.

There is such a decree †.

MR. SOLICITOR GENERAL.

Whether there is, or is not, or whether it was understood what it was supposed to be, or upon what that decree proceeded, is improper to enquire. If you are of opinion, that it was upon a full and actual state of the nature of the office, and if it was sold under that decree,—it would be little to the purpose. There are various offices that are permitted, for what I know, directed to be sold; but what does that apply to this question? which is not whether Mr. Vaughan, holding a grant for certain years (an interest is not the question)—whether he should sell that, but whether he should obtain that interest by a corrupt bribe, offered to a first minister? But what has that to do with this sort of question? Commissions in the army, every body knows, are sold by the possessors of them: the Gazette takes notice of those who purchase, for the sake of shewing who may sell. Will any inference be drawn from thence, to shew the propriety of any servants of the crown, recommending a person to an office, under the corrupt influence of a bribe? He who comes in under purchase, is permitted in some circumstances, to sell, in others not. The court need not now be troubled with the distinction where, and where not. Would the commander of the army, the secretary at war, or a person to whom this appointment belongs, would he subject himself to an information, from having prostituted that office, by this sort of motive,---by an example of this kind, proving, that an officer, holding the office, is permitted to take a sum of money to change the possession. It is the duty,---and from thence alone, the mischief of that practice is prevented;---it is the duty of those, who supersede that business, to see that nothing improper is practised. If an officer goes out of the army, it is the duty of the officers presiding, to see that a proper person fills his place, and what private bargains they make among themselves, that

† When the decree of the court of chancery for the sale of the office was mentioned and doubted, upon Mr. Vaughan's questioning Mr. Sharp, he, with great candour confessed, that to knowledge, there was such a decree.



is nothing,---but when a person is polluted by an application, like that before the court, the public would be ruined by the transaction. Then the person that bids highest, not the man who has the most merit, would be preferred to the office; therefore, my lord, the circumstance of the office having been sold, as that affidavit states, has nothing to do with this question. Then it is said, it is only mischievous to the public, when an improper man is brought in, but not when a proper man---Mr. Vaughan is that proper man, he thinks he has made out the propriety, by shewing, that he has 80,000*l.* to sue out in that court of justice, and he is the proper person; therefore, to preside in that court. A great many ingenious arguments have been thrown out. I should think, in the representation Mr. Vaughan makes of his case, pointing himself out as the most fit man, this additional interest, might, perhaps, have been spared †. Mr. Vaughan, however,

† The candour and propriety of this observation will best appear by considering the nature of the clerk of the court's duty. It is his business, when the attornies have filed the declarations in their respective causes, to sign and seal the process consequent upon them,---and to record the judgements of the court. In the first of these duties, the clerk of the court cannot possibly favour himself, because, the process issuing when signed, are carried from his office by the different attornies in their several causes, and by them lodged in the provost marshal's office, and they are returnable into that office every three months; for those writs that are returned *nulla bona*, (or unsatisfied) the attornies apply to the clerk of the court for fresh writs; therefore, the provost marshal, only, has it in his power, to be guilty of any unjust partiality, with respect to priority or preference.---As to recording of judgements, which is the second branch, it will appear, that he cannot there consult his own interest, without, at the same time, being just to all. The method of proceeding in this case is, and always has been, as follows:---The clerk of the court calls over the actions depending in court alphabetically, according to the initial letters of the plaintiffs names; and in the same order in which they are obtained, they should be (and when they have been recorded at all, are) recorded in his office; for should any partiality be shewn in this respect, any one aggrieved might, and naturally would, instantly complain to the court, against the clerk of the court, and the court would immediately punish so flagrant a breach of justice, or apply to the governor for the suspension of the delinquent. It may be supposed, that the long neglect of recording judgements, may be ascribed to the clerk of the court's having no personal interest in,  
or



however, represents himself, as having the merit of correcting some abuses in this office. I don't very well understand what Mr. Vaughan had to do with it, nor shall I enter into it. But, upon the score of this merit, he thought himself intitled to solicit the duke of Grafton and Mr. Conway, the then secretaries of state, for a further interest in this office \*.——The duke referred him to those to whom it belonged, not doubting, but that what he asked, would be granted, if it was proper.

L O R D M A N S F I E L D.

He had been informed, that he had applied before.

M R. S O L I C I T O R G E N E R A L.

Yes;—Then Mr. Vaughan was so wise as to furnish us with an evidence we had not.—Mr. Vaughan was apprized this was not the business of the noble duke's department; and if an application was proper, he was to take the usual course of application.—Mr. Lee, I think, observed, that Mr. Vaughan made the application under the idea, that the duke of Grafton had the disposal of the office, though he had been informed otherwise three years before ‡. It was impossible to *suppose* he had. In justice to the noble duke, his direction was, that all the information that could be procured in England upon these questions, should be collected and laid before the court, that any use might be made of them for or against the argument;—and, I am sure, the noble duke would be much better pleased, that the rule should be discharged upon the truth of those informations, than established upon them, if they are not true.

or regard for the security of property, and, that as all the suitors were equal sufferers, so all submitted to the consequential evil. Upon the same principle it naturally follows, that the person who *has* large sums out, would be often obliged to sue many that were indebted to him, and therefore, as it was his interest, that his own judgements should be recorded, it will follow as a consequence, that he must record (each court) all others alphabetically in the order obtained.—Every candid person will hence see the reason and great propriety of Mr. Vaughan's plea, *his property in the island*.

\* To whose province it then belonged, as appears by Mr. Pollock's affidavit.

‡ Mr. Vaughan was informed the very reverse. If at his application in 1766, the duke referred him to those to whom it properly belonged, (as Mr. solicitor but just before observed) he could have no other idea, than that the duke had the disposal of the office. In his own letter p. 21, the duke expressly declares, that the affair properly belonged to the marquis of Rockingham, as then first commissioner of the treasury.



By these affidavits, your lordship sees, it was not in the duke's disposal; therefore, any arguments that can be drawn from that proposition in the duke's favour, he is perfectly entitled to. Thus things rested, Mr. Wedderburn says, for three years; then some circumstances took place, that occasioned this motive. The circumstances, I understand, are, there was a treaty with the present possessors of the office, between Mr. Vaughan and some other persons, on the one part, and Mr. Howell, whom I never heard of before, on the other; and that those persons, in the course of those treaties, tried to circumvent one another;—but this man had most interest, the other most money.—What has all this to do with this business? If any person connected with the Duke of Grafton, or any agent of his, had made out this, it would have been of some use, for the court will never grant an information to a man, who comes before the court with unclean hands:—but it amounts, in substance, to nothing more, than a strange sort of conversation between God knows who,—which has nothing to do with this question, more than the next your lordship will have to consider. This conversation, Mr. Wedderburn says, impressed his client with a conviction, that Mr. Howell had obtained better success, and that the foundation of it was his money. What impressions any other stories made upon Mr. Vaughan, I trust, are immaterial to this subject. Mr. Vaughan knows his own motives, and is to give an account of them; we have nothing to do with them.—Mr. Vaughan then abandoning the supposed merit, which entitled him to have the office upon a better ground, reverts to the same application as the other—he reverts to that of money, and he has bargained with the possessors of the office for a new farm of their interest, for 1500l. a year.—1500l. a year, Mr. Vaughan has thought fit to give for a farm of that office, which has been farmed at 400l. How is this thought to be material? unless it be, that it is hard for Mr. Vaughan to be laid under the necessity of buying this thing so dear, and it would have been more convenient to have got it cheaper. I do not see what we are to infer with regard to Mr. Vaughan's fitness, from his having given 1500l. a year for that, for which others gave four. He having given that, it is probable he sees a way of being reim-  
bursed



burfed in it. It feems to me, thofe he fues for his 80,000l. are not likely, whatever he may get, to get much by it †. Mr. Wedderburn complains of fome letters in the news-papers, which charge Mr. Vaughan, not with an attempt to corrupt the duke of Grafton,—(that is nothing) but for a renunciation of the bill of rights.—What further affidavits Mr. Vaughan may have made to fupport any body, that is equally unknown to me; and what crime the news-papers import, is equally unknown to me. I do affure him and his client, I did not write the letters; I do affure him, I don't know who did:—I do affure him, to the beft of my belief, the duke did not. I cannot underftand, therefore, what advantage Mr. Vaughan means to derive from thofe letters. My friend fays, if this profecution was intended, thofe who intended it, fhould have ftopped the above in the news-papers. If my learned friend knows how that is to be brought about, there are thofe who would be obliged to him for the receipt. Let us fuppofe, that thofe who have to do with this profecution, knew no fuch means to effect it. My learned friend fays, nothing is fo weak as Mr. Vaughan's conduct in this affair; and he compares it to a cafe in the court of chancery. My lord, that man, it feems, was let off lightly, and with little punifhment, upon two grounds; the one, that he was infane, the other, that his counfel were inftructed to confent, that 20l. fhould be given to a public charity. It has not yet been faid, Mr. Vaughan is infane: I need not enter upon that point. Has my learned friend inftructions from Mr. Vaughan to give this 5000l. to a public charity? My lord, if he has, thinking as I do about it, I don't think it impoffible, but that all who are to judge of this profecution, will be fatisfied in doing, what my learned friend, I hope, has inftructions to do. I affure my learned friend, as that is a matter of propofi-

† The fees of the clerk of the court's office are regulated by law, and it appears by the votes of the afsembly in Jamaica, that no more than legal fees have been taken. The effect of the advanced price, is (annually) Mr. Vaughan's (or his deputy's) profits muft be confiderably leffened. But as matters were circumftanced, Mr. Vaughan would have given up all profits whatever, and diercted that office, with no other view, than the benefit he would have received in common with the public.



tion, I am ready to treat with him upon any thing of that sort. My learned friend says, What good can this prosecution do? it can do none, for on one side Temple-bar, we all know, that the offers are never accepted, on the other side, every body believes they are. Now, says he, we, on one side Temple-bar, don't want to be convinced that we are right; people on the other side the Bar must be in a situation not to be convinced. —I trust, I have a better opinion of the people on the other side Temple-bar, in that instance; I dare say, he thinks as respectably of them in every other as I do: if it is so, that those offers are so common, and accepted whenever they are made, I trust, by this prosecution, they will know they had been misinformed, when they were told so. *When a man stands out, like this, to commence a prosecution upon the ground of innocence, calling upon all the world to say the contrary, and challenging every man to do so,* I hope they will weigh these things again and again, before they do so judge: I hope some good will result in that respect; but that is a small one, to another good I trust it will be attended with; that it will be understood from this court, that those are offers not to be made; that public ministers are not to be put in a position for being tempted with these species of offers; but that it is criminal in the tempter. It is said, however, if this be an offence, still it is submitted, whether it is right for the court to interpose, by way of information: the reason why the court should not interpose, by way of information, was partly because the nature of this offence, was misrepresented in the newspaper: now, for that very reason, I should apprehend, it is proper that the court should interpose. If Mr. Vaughan has suffered in the opinion of his friends, by misrepresentation, he ought to thank those, who are now concurring with him, in proving him innocent where he is innocent. But the charge against him now is guilty, against which he will or will not defend himself; those who do impute offence or criminality, will treat it accordingly; those who think otherwise, will judge accordingly; and he will, in any case, defend himself with his friends, against that misrepresentation which has been made. But, it is said, these prejudices, which have thus gone abroad, and have corrupted the  
minds



minds of a jury against him, are reasons why the court should not grant an information.---If the minds of men are so tainted and prejudiced against Mr. Vaughan, I should wish the question, before this court, who have not entertained such prejudices and ideas, rather than before those who have entertained great partiality against Mr. Vaughan: the argument strikes me, that it is fitter, for Mr. Vaughan's interest, the question should be considered, where there are no prejudices, rather than where there are so many. The interposition of the court, it is urged, would be a judicial prejudice; this is the first time I have ever heard that language. My learned friend passes over it very slightly; but supposes, the granting an information, would be a judicial prejudice. That is an objection, that will go to the whole jurisdiction of the court; these reasons have been urged and considered elsewhere: I trust the court will not attend much to the idea of a judicial prejudice, arising from an information: If so, there seems to be much more ground for an information with those, to whom it is thought very material, that Mr. Vaughan should stand in a fair light. My lord, with this introduction, and this preamble, I think it is, Mr. Wedderburn comes to the consideration of the question, which, at the utmost, he proposed to make,---  
 “ Whether it be an offence to *attempt to corrupt* a minister in the disposition of places of trust in the colonies?” Mr. Wedderburn very properly says, before he considers, whether the solicitation to commit it is an offence, he will consider, whether the act, if done, would be so. He states to your Lordship, an act passed in the reign of Edward the sixth, which, he says, contains a set of local regulations, and which imports a decision in this part of the cause—that these provisions and regulations do not extend to the colonies, and consequently, this is not in the provision of that act of parliament. If it was material, the case cited does not prove it;—nothing could be cited from the case that is reported. But, Mr. Wedderburn determines it was so decided, because Lord Chief Justice Holt gave judgement for the plaintiff. It strikes me, judgement for the plaintiff in that case, might have been given without.---It was plain, that the case was not in the act, as that the act did not extend in point of locality to the place. I apprehend, upon



the cases stated, it will be found, if it is necessary to travel minutely in it, *that no such case exists*—I don't hold it material to the argument. Mr. Wedderburn might have reminded your lordship of another act of parliament, upon which there is no decision. That act of parliament he could not overlook, reading what he has read, and what every body has read in the course of this question. There is an act, where no case has been cited, that carries an idea that it reaches the colonies; and that is where it is said, the great officers shall not dispose of places for money. If any of these places, in point of locality, were to be exercised out of the realm, yet taking their appointment in the realm, it was criminal in those officers to grant such offices, because the duty is to be held out of the realm. I don't insist that either of these acts of parliament, or any construction of them, are necessary to support this cause; if they should be found so, I trust, that the aid of both these acts, may be prayed on the part of the prosecution; but, in my idea of the case, neither of them are necessary for the purpose. Mr. Wedderburn says, if he is right in his judgment, that this act does not apply to the present case; he trusts, it is no offence, independent of that act of parliament. He says, there are many acts that are dishonourable, illegal, and not criminal; that the court will distinguish, that this court exercises no censorial authority; that the court punishes nobody for being a bad man; these are readily assented to. Mr. Wedderburn offers me an admission, that to buy and sell offices, is, in all cases, dishonourable; I don't accede to it; I know there are offices not saleable, I think there are offices saleable; it is dishonourable to sell the former, but not criminal to sell those the law allows saleable. I think, his inferences are calculated for purposes your lordship has nothing to do with. He says, it is not dishonourable to give money in cases of this sort. There may be worse modes, for what I know, than that Mr. Vaughan has taken; it suffices me to prove *that* is a bad one: there may be worse—I don't enter into that, whether there are or not.

Mr. Wedderburn takes merit for having reasoned upon the subject, and thinks the argument is on the contrary side; and again throws down the gauntlet, and puts



puts me to shew precedents of an information upon the charge that lies against Mr. Vaughan, upon the present question: I can't produce one. I hope, that one such precedent will remain to the end of time, as a single one, and that there never will be another.

Mr. Wedderburn was asked, Whether he had read what Serjeant Hawkins had wrote? he professed to have read it, and undertook to perform that, which he forgot to do—He did not do it—Your lordship will permit me to supply that defect. All the senses of bribery, that are commented on by that great lawyer, are bribery, as understood to be the selling and buying places by people not able to execute them, but who are most able to pay for them. Nor can any thing be a greater discouragement to industry and virtue, than to see places conferred upon those who have no other qualification, but that of being the highest bidder; nor can any thing be a greater temptation to officers, to abuse their power by bribery and extortion, and other improper acts, to make their bargain answer their expectations. I wish Mr. Vaughan had read this, before he took that at 1500l. a year, which had been usually let at 400l. My learned friend does not say this imports upon the learned writer, that this was an offence at common law—in words he has not said it; but he has said, what I now appeal to your lordship for,—Whether, in the opinion of that learned writer, he understood this to be an offence, or not, at common law: he goes on to say, “for which reason the legislature have provided specific remedies of prosecution,” and so on; but unless it is to be understood by that writer, that this was an offence, for which the parliament then provided remedies, fit for an offence of this magnitude, the assertion was unnecessary. My friend Mr. Lee, uses a different edition of Hawkins to what I do, and he says, that there is a limitation at the end of it, that it does not extend to the colonies.

MR. LEE.

It is the 4th section.

MR. SOLICITOR GENERAL.

Here is that passage, in that very learned, correct, and accurate writer in the laws of this country. Does it rest upon this single authority, that no *dictum*, no *precedent* can be found? My learned friend should consult the case

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of



of Lord Macclesfield: Does he there find nothing? It was imputed to him, that he took money for the disposal of various offices, and for recommending to offices. It may be said, the prosecution had for its foundation, those particular acts of parliament, (one of which Mr. Wedderburn has stated, the other I alluded to) that the parties did not suppose the proposition was an offence at common law, whether an act of parliament, for the first time, describes that to be an offence — it would be so understood, it cannot be otherwise understood. Those who read that will see that Obl , who was the prosecutor upon that suit, availed himself of that. This was an offence long antecedent to those provisions, long antecedent to that species of prosecution. It appears, the result of it was, without stating what the judges thought (that we are not competent to do) that great lawyer was not only *prosecuted* in a manner different from the provisions of that statute, but *punished* in a different manner; and they can only be supported upon this presumption, that those are offences at common law. That those were no offences at common law, my lord insisted upon the practice of his predecessors, as having a right to dispose of those places: and there was one, which was clerk of the custos, (that is an office in the appointment of the crown) the possessor thereof wanted to sell it; the man that wanted to possess it, made his terms with the possessor; it was agreed, one should be appointed in consequence of the other's surrender. An application was made to the chancellor; the usual answer was given, according to evidence---a good sort of man, my lord, was to be present. Lord Macclesfield defends this proceeding, by insisting he had a right to recommend; and his counsel for him say, A right to recommend, is, in other words, a right to make what you can of that recommendation: that doctrine did not prevail. It was then argued, that a right to recommend, existed only in confidence, that it was exercised purely, disinterestedly and honestly, and that the person should be recommended upon the score of his personal merit, and not the largeness of the sum offered. That, or something like that, was understood by Mr. Vaughan, in the present case. The noble duke does not claim a right to recommend;—in what manner does he apply to him? he, it is plain, supposed the noble duke

at



at the head of the treasury, and privy-counsellor, was something different from a man in the street; therefore, he did not make the offer to such, but to the noble duke, a privy-counsellor and first lord of the treasury.---How did he suppose this bribe was to operate? How could it operate upon the duke, but by presenting Mr. Vaughan to the king, not knowing Mr. Vaughan, knowing nothing about him, requiring no knowledge about him, but taking up the object of that fitness, upon the representation of the noble duke, who received 5000l. for his recommendation? This was the conduct Mr. Vaughan held; and, if he had not mistaken the man, prudence would have been imputed to him; instead of that, folly, which he has submitted to have so liberally thrown out upon him. It is said, this then is the situation of the case, supposing that, what was attempted to be done, had been done. I want no aid from either of those two acts of parliaments, to make out my proposition, which is, that it is criminal, because it is incompatible with every idea of the duty of the office the duke was invested with. It being the duty of those officers, whenever the king asks advice, to give it uncorruptedly, honestly, and freely: instead of doing this, if the duke had accepted this bribe, and, under the influence of the bribe, had done what Mr. Vaughan desired, no proposition can be clearer or plainer;---it requires no subtlety of argument, no knowledge of the law, to see that it would be criminal, highly criminal, subject matter for impeachment, beyond all question, if the noble duke had accepted this money, with a view to act as the giver of the money would have him to do. If it be so, will it be material to this cause, to consider, whether it falls under this, that, or the other act of parliament? It is criminal in every man, accepting or holding any office of trust, more so, in those that possess the first offices of trust in the state, to betray the duties of the office, and exercise the power of that office, under the most sordid and corrupt motives; their duty being to exercise all the powers they possess, freely, honestly, disinterestedly, and uncorruptedly. So far upon the case of supposing the bribe had been accepted.

Mr. Wedderburn argues most triumphantly, that if it could not be an offence when accepted; then it could be none to offer it: that I shall not contend with him. But,



if it be an offence in the tempted when committed, it remains for the court to consider, whether it is not an offence on the part of the defendant to have done what he did.---Mr. Wedderburn says, Is there a precedent, that it is criminal to solicit another to do an illegal act? He says it is so in the case of felony;---for to solicit felony, is to counsel felony. I don't know upon what principle that is criminal, if it is not felony to solicit or countenance the commission of any other crimes---illegal acts are one thing, crimes another,---to recur to the distinction the gentleman set out in: he says, It is not so in misdemeanors, and he had found but one instance in which the court had seemed to be of another opinion, that was the case in Shower, the king against Johnson: he seemed to cite this case with candor. In justice to his client, the judges seemed to talk nonsense; but your lordship has obviated that, by saying, all this was upon the *after* question; there being no doubt, that the offence the man had committed, was an offence, and the only doubt, being upon the measure of punishment. My friend cited expressions, insinuating, that my lord chief justice might recollect some former offence that the man had given him. The idea of the reporter upon that, is, that the man being convicted of an offence, my lord chief justice is, from motives of resentment, supposed to incline to the more rigorous punishment. It is upon that point, only, the reporter's insinuation, he speaks of, was founded. Mr. Justice Jones's argument is very good: he says, If the perjury itself had been committed by the law (as it then stood) of subornation, the party could be fined only 40l. therefore, he says also, I am against giving more than 40l. penalty; for the attempt can't be worse than the thing done. That is a fair and good reason; for that is a proper degree of punishment. That is all beside the question; this has nothing to do with the authority of the case itself. The decision is in point. The thing was an offence, the party had been properly convicted, and the judges differed only in the measure of punishment. My learned friend, who followed Mr. Wedderburn, says, there were other cases, and there certainly are many, where attempts of this sort---solicitations to commit crimes, are themselves held criminal; it would be strange indeed, if they were not. A case was alluded to, the case of the king and Plimpton. The party there was convicted of



soliciting by promise. The gentleman's observation is, that this must be presumed to be a promise accepted. It is after verdict---after or before, is a distinction in cases of this sort, without a difference. It is that crime as charged, a crime, that the offence was a proper offence, as indicted; and that the party merited punishment. This is a second case in point. My learned friend alluded to a more modern case respecting bribery at elections, which is in my memory, in the memory of the court, which came from Abington, it was questioned, whether the bribe the defendant was charged with giving, was accepted, or not; and, if it was, whether it was necessary that it should be accepted, in order to make a case in that act of parliament. The party accepted the bribe, not with an intent to act upon it, but to found a prosecution upon it. They said, here was nobody corrupted, and nobody could be corrupting: thus much I remember. The opinion of the court was, that it was not necessary, that there should be any body corrupted; the bribe was accepted, and that was enough. But, in the argument, this I collected, That though it was made necessary, that the acceptance of the bribe should be within the provision of that act, to make it an offence at common law that took the provision, said he, should have proceeded by information. It is not an offence within this act of parliament, because the acceptance of the bribe was necessary.

## COURT.

It was for a mayor.

MR. SOLICITOR GENERAL.

No, that is the case of the king and Spinnage; this is Bush and Rawlins.

MR. JUSTICE ASTON.

And the words "to procure" were left out. Sir Fletcher Norton was counsel, and there, upon consideration, they struck out the words, "to procure," because, it was thought, it would not be sufficient proof in evidence, because he did not corrupt in effect.

MR. SOLICITOR GENERAL.

The whole argument produced a great deal of *elocution* here, as if the act was not done at common law.---It was argued on the other side, that the offence was completed in common law. It was taken for granted, he might have been prosecuted by information. In citing these cases,

I rather



I rather lose by them; I don't conceive that it is necessary they should at all have existed. The prosecution, independent of all regard to authority, stands upon a bottom much too wide to need that *determination* and *report*. If it had been true, in the terms of the challenge, that I could have produced no *precedent* no *dictum*, I should have thought the ground too clear to have been shaken, from any thing your lordship has heard to-day.---Mr. Lee subjoined, that there must, in order to be criminal, and that it could only be so, where there was an evil intention on the one hand, and an ability to commit the offence on the other.---Let us try this: That there was an evil intention on the one hand, is admitted; that there was an ability to commit the offence on the other, does not lie in Mr. Vaughan's mouth to dispute: he certainly supposed it when he committed it. I don't see the ground why he supposed there was not the ability.---That there was not the inclination to commit it, is apparent, from the consequences. It is a proposition, I think, I need not labour much. There certainly was an ability in the noble duke of giving advice; it is possible his advice, had he thought fit to have given it, might have been attended to; and, it is more than probable, had he given such advice, the king would have believed it; and his opinion of his character, would have made it believed, that he recommended Mr. Vaughan, because he was the proper person to be intrusted with the office. I therefore think, the crime is in giving the king interested advice: that is the ability. If there had been the inclination, there certainly is the ability in the present case. Having said thus much, I will only add, that your lordship will permit me to use an argument very recent:---If it requires, after the *industry*, the *learning*, and *ability*, that has been employed to-day, to make out the offence, I think it recurs, whether it is an offence or no. Your lordship's making the rule absolute, will not preclude them from it. When the information passes, they may demur to it. Then it comes before the court to be argued, with all the solemnity that the importance of the case deserves; and Mr. Vaughan, contrary to his intention, will have, at least, the merit of giving the decision to a great constitutional question; namely, Whether it be lawful or innocent for the first officer in the state, intrusted and con-

fided



ended in, to choose for himself, whether he will discharge that duty disinterestedly and honestly, by attending to such applications as these? and whether it be criminal in him to break all these duties? if not, Whether it will be criminal in Mr. Vaughan, and all so disposed, to do all that is in their power, and on their part, to tempt him to do so? Mr. Vaughan has done his part; the duke, as it happens, did nothing at all. This question will come properly to be discussed in that stage of the business. All this argument will be nothing, if your lordship should be mistaken in your opinion. Mr. Vaughan will have merited a great deal of his country indeed, if he can have established this proposition, that it is proper for a minister to sell his influence; to take all the money he can get; and that it is not only innocent, but meritorious, in any man that will enable him to do so. I hope the court will not stop the business in this stage of it; but that my learned friend may have an opportunity of vindicating the character of his client.

MR. WALLACE.

I will remind your lordship of a case or two upon the last head (which is of solicitation) which may be agitated. It is in the 31st in the king and the motion for an information at common law, against defendant who attempted to bribe one a fish-monger in that place to vote for Mr. for a member of parliament; there he told him his intention was to vote for Mr. the other candidate. He offered him 50l. to go out of town, and not to vote at all. A motion was made: Mr. Justice Wilmot inveighed strongly against the heinousness of such an attempt. There are many cases in my memory in the court. There was one in the first of the present king, of one Norton, for an attempt to corrupt one Famworth, by an offer to his wife. I remember one in the case of on attempting to corrupt a man to vote for a mayor.

MR. RANBY.

May it please your lordship, I am of counsel on the same side. I think it is pretty extraordinary in Mr. Vaughan, to swear by his affidavit, that he apprehended these publications in the news-paper, to come from his grace the duke of Grafton, when those letters were false, and his grace in possession of the true one.

LORD



LORD MANSFIELD.

What the solicitor general concluded with, is decisive upon the present occasion, on account of the repeated declarations by the counsel for the defendant, that a practice of the kind complained of here, is certainly dishonourable and scandalous; and, because it appears, that declaration of theirs, is warranted by the opinion the defendant himself had of the transaction, which, most manifestly, he thought at the time, to be a transaction which could not bear the light; for in his letter he writes in this manner upon it: "A proposition that requires the utmost secrecy." Secrecy!---Why, if the office is to go to the highest bidder, and Mr. Howell was offering, and that occasioned a second higher offer to be proposed, why secrecy? Mr. Henry Newcome, he says, has a delicacy---what his delicacy was, appears upon the affidavit; that Mr. Newcome thought, after reflecting upon it, the transaction to be such, he would not meddle with it. The extraordinary manner of the security for the payment of the money, not by a bond, not by agreement, not by a note, (because they would have been certainly void in law, for in a criminal transaction, every bond and agreement made to secure it, would be void in law) but by an affidavit made before the lord mayor, swearing to pay the money, and in that affidavit, an assurance, that it had never been divulged but to Mr. Newcome, nor ever should be to man, woman, nor child in the world. This appears to be the sense of the defendant's counsel, and of the defendant himself. It has been insinuated by the counsel, that transactions of this kind for money are frequent, *i. e.* that in the city of London, they are believed to be frequent. And the defence made by the affidavit is, that he verily believed the office would be accounted for, and was saleable, and if was not sold to him, it would be sold to Mr. Howell; therefore, he went upon a presumption, that it was saleable. The nature of the thing, without authority from Hawkins, shews why these things were urged by the defendant's counsel; for, if a man sells lawfully what he has a right to sell, there is nothing scandalous or dishonourable; but, if a man, standing under the relation of an officer under the king, or of a person in whom the king puts confidence, or of a minister, if he takes money for the use of that confidence the king puts in him,



him, he basely betrays the king, he basely betrays his trust---it may then be called scandalous and dishonourable (if those epithets are to be chosen, instead of the epithet, criminal.) The mischief also that may arise to the public in buying the grant from the crown (which the wisdom of the constitution intrusts the king in disposing of, on account of the business to be executed by them.) If honours, if bishopricks, if preferments, if pardons, if every thing is to be put up to sale, see the terrible consequence that will result there-from to the public. If the case is so circumstanced, for this court, upon that ground, to refuse the information; which does effectually bar every indictment; (for no grand jury would grant an indictment after this court had, upon point of law, debarred an information) that it is no crime in law to commit such a fact;---it would be highly improper for this court to do it in a summary way, which would be liable to no review, if the matter was ever so doubtful. Unless, therefore, I was clearer than the light of the sun at noon-day, that it had been settled and established, that so mischievous a practice should not be punishable by the laws in being, I should agree for making this rule absolute. The defendant may demur to it, or move in arrest of judgement after trial; and, if he is not satisfied by this court, he may have the opinion of the high judicature, assisted by all the judges of England. And, when the question comes to be solemnly adjudged, it will be for their consideration, if they should think there should be no law in being to guard against the mischievous consequences. I own, at present, I am not satisfied with any of the arguments that have been used to raise a doubt, whether this is, in the language of the law, a misdemeanor, and punishable as such. I think, the natural genius of a man's own mind, judges better of it, than all the labour and ingenuity that has been used, to make it not criminal;---when I say criminal, I mean criminal as a misdemeanor. I will say little upon that, because, whatever opinion I may be of now, it is without prejudice. I will hear the argument upon a demurrer, if there is one, or upon an arrest of judgement, if there is one, just as open as if nothing had passed. Therefore, I shall purposely avoid saying any thing on the argument, with a view of prejudicing, as little as possible, any future argu-

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ment, if that is thought fit upon the occasion. In the first place, as to the statute of Richard the second, and Edward the sixth, I do agree with the solicitor general, the question does not turn upon them, whether they do or do not extend to Jamaica; but the argument made use of, does not at all go to the question, whether they do not extend to this case; for this office is granted by letters patent, under the great seal of England: all letters patent that are granted by the king, under the great seal, are governed by the law of England. The colonies themselves have their own particular laws, and the argument very colourable, which Mr. Wedderburn mentioned, if it is in the report.—To be sure, no act of parliament made in England, binds Ireland, or a colony, actually settled, without naming them; but it is held, all the laws of England, both common and statute, go to a colony new settled, which were in being at the time of settlement, with this restriction:---Provided that they be laws suited to their situation and condition; and therefore, with that restriction, to be sure, a hundreth part of the statutes of England don't go to the colonies: but they do go, if they are apposite, and adapted to their situation and condition, for, as they carry the statute law, so they carry the common laws, that are applicable. The situation of Jamaica differs indeed, because, being a conquered country, it retains its own laws, till the conqueror alters them, and they are retained in so far as they are not altered; and, unless they are totally altered, they retain their own laws; therefore, the argument is very strong, as to the nature of Jamaica, that those positive laws shall not extend to them; and, I know, in experience, a great many acts have been adjudged not to extend to Jamaica; as for instance, the statute of frauds, and several others, (though it was conquered in Cromwell's time) that and several others were made before the usurpation. It is quite a different consideration, and you will find that in the case of the Isle of Man, I think it is in the second or third institute; you will find it there—the chief justice, I think, or two or three of the judges attending with counsel, they might descend according to the laws of England, the letters patent being the law of England, they being entitled to dower under the law of England, and in that case they held, that the estate was to descend



to the daughter of

therefore, if that was necessary, it would not reach to the case of Letters patent under the great seal, must be governed by the grand law of England, be they for commissions abroad, or whatever they may be. But, it does not seem to me, that this matter turns upon the statute of Richard the second, or Edward the sixth, but upon the common law. The first great consideration is, whether a privy-counsellor, and an officer at the head of the king's treasury, and in confidence with the king, selling that office, *i. e.* selling his interest with the king, for the grant of that office;—whether this is a misdemeanor or not at common law? For you must take the fact, which there is no controversy about.—See what the fact is. This is an office in the gift of the king alone by letters patent; it is not in the gift of any subject whatever;—there is no right of office to recommend whatever; but it is the king's own grant, —and it is the king's grant which must pass *ex gratia speciali mera modi ex gratia scientii*. And if the king sold it by his letters patent, it would be acting contrary to the trust the constitution hath reposed in him, for the disposal of those offices.—The constitution don't intend the crown should sell those offices, to raise a revenue out of those offices. This being the nature of those offices, what is the application? The duke of Grafton has sworn thus—he has sworn that this offer was made him, with a view to tempt and corrupt him, for a gift or reward of 5000l, to procure his majesty to grant the aforesaid office in the manner mentioned: that, the duke has sworn, Mr. Vaughan does not deny it, therefore, it is admitted, this was the view to procure this office from his majesty—not barely to *give* it himself, but to *procure* the office. Is it possible to hesitate, whether this would not be criminal in the duke of Grafton,—contrary to his duty as a privy-counsellor,—contrary to his duty as a minister,—contrary to his duty as a subject? If a man in no office has interest with the king, and comes to recommend a person to him, under the influence of a bribe, it is different what the person, who desires to be patentee, does. I have looked into no case upon it, but from my memory, I do think, if you look back to the impeachments of the house of commons for 200 years, of ministers that, true or false,



(very often there are false charges, and sometimes true---) there hardly ever is an impeachment against a minister, where the charge is not for receiving money for procuring a grant from the king. I am satisfied it was so with the duke of Buckingham; and I am satisfied it was so with the lord Clarendon, though he was a very honest man.

MR. WEDDERBURN.

That was upon the ground of monopoly.

LORD MANSFIELD.

It is the sum of money makes a charge. If it is criminal in ministers or privy-counsellors to do this, I take it to be a very necessary consequence, that, wherever it is a crime to take money, it is a crime to give it; because the corruption is reciprocal. It is corrupt in the receiver, it is corrupt in the tempter and giver. I take it in all circumstances to be reciprocal,—where the receiver is guilty, the giver is also. But it is said, this is not the *giver*, it was refused---That attempts to the crime are not the crime, is certainly true, where there is an attempt to commit a crime, which of itself is not the crime. But there are many cases where the attempt is the crime; and, in all cases of corruption by bribery, the attempt is complete with regard to the offerer. His crime has had its full completion, whether the other refuses it, or takes it, does what he was bribed to do or not;—from the nature of the thing it is so.---There are many cases. Mr. Lee, very fairly, though it was against him, looked into the authority of lord Coke--He says, if you offer a bribe to a judge,—no matter whether he take it or not; though he refuses it, the bribe is complete with him that offers it: as in the cases that have been mentioned of bribery at common law, of money at an election for a man to take a bribe for his vote. If it respects a place of public trust, the constitution intends it shall be free---How does that hold with the advice given by a minister to the king? Upon the same principles;---his advice should be free according to his judgement. It is the duty of his office---he has sworn to it; therefore, in those cases Mr. Wallace alluded to (I remember the two last) it was taken for granted, that an offer to bribe at election of members of parliament, or of a magistrate at a borough, though the person did not vote, yet against the offerer the crime was  
com-



complete. So it was in the case of Lee against Plimpton. Mr. Lee was candid enough to cite this, though against him. I am very far from being satisfied that these arguments raise a doubt, that this is not a misdemeanor. If it was a doubtful matter, I should be of opinion to have it determined in that way, where it could not be concluded by the opinion of this court, but might go farther.

MR. JUSTICE YATES.

The counsel for the defendant have very ingeniously, and with great ability, endeavoured to lead off the attention of the court from trying the question, to that which is not the question. With this view they have learnedly debated, whether the statute of Edward the sixth extends to Jamaica; whether a sale of office is an offence at common law, or not?—When, after all, this has not the least semblance of a sale of office, nay, the defendant don't assume the character of a purchaser; for, by his own affidavit and offer, it is for such persons as shall have procured the reversion for him. Now, in all purchases, the contracting parties must be deemed to have a power to fulfil the contract. That, in this case, supposes the office saleable; that it should be an office within the power of the duke of Grafton himself to grant,—the defendant does not look upon it in that light; but there is a sum of money offered for the procuring this office, which the defendant tells us, is in the gift of the crown. Another thing too,—when fair purchases are made, they don't come cloaked up in an affidavit of secrecy, but a frank, open, and ingenuous offer, if the heart means honestly. In this case there is an affidavit of the utmost secrecy,—the letter says, that the proposal requires the utmost secrecy; and, to answer the explanation given of this affidavit of secrecy, it is said,—that the defendant might be considered in the light of an indifferent person.—I see, in this letter he desires, that if the offer be not received, that he may then have the affidavit back, in order to destroy it;—when, if all his apprehension was, lest the duke should suspect he meant to entrap him, if the offer was rejected; where was that trap that should make it necessary, after the affair was over, to destroy the affidavit? This is the true question; and I am sorry  
that



that ever such a question should be made a question---. Whether a bribery to obtain an office, shall be an offence or no?---It is stated by the defendant himself, to be an office of great trust and profit. The method used to obtain it, is to influence a privy-counsellor to induce, or to warp the judgement of the king to give an office of so much consequence, *merely* from the *motive offered* in this case to the duke, — the *motive* of a *reward* to procure his interest. But however, as this matter will still be open for the defendant to debate hereafter, I shall think it wrong to go into the question too much now. The light the solicitor-general put it in at last, is right; and even if it was but questionable, it would be right to go into it; it would be wrong for us to anticipate the final decision of that question, which he will be afterwards at liberty to make by demurrer. I shall restrain myself from making further observations now; but it is certainly a matter fit for an enquiry, and the defendant and prosecutor will have time to consider the matter more fully.

MR. JUSTICE ASTON.

I am of the same opinion.

MR. JUSTICE WILLES.

I am also of the same opinion.

### An impartial Review of Mr. VAUGHAN'S Conduct.

THE reader is now acquainted with all the facts relative to this transaction. It only remains to explain Mr. Vaughan's motives, and so submit them to the public.

He neither solicits, nor expects to meet with any favour from his enemies; but trusts, that all good and honest men will make proper allowances for the force of the motives which influenced him in this affair.

Let it be remembered;

That immediately upon his return from Jamaica, he applied to the duke of Grafton and general Conway, then secretaries of state, (with whom the appointment to that office rested) to present a petition to the king, praying



praying the reversion thereof. This, however, did not succeed, though he pursued exactly the same plan that Mess. Lawton and Paxton had done in petitioning the king; though the fullest testimonials in his favour, from the assembly in Jamaica, were superadded; and supported also by the recommendation of those, who might be presumed to be the best judges in this kingdom of the propriety of his application.---Thus the affair slept for three years;—when, being assured on good authority, that the duke of Grafton was endeavouring to procure a *resignation of the patent*, he thought it his duty to use every means in his power to defend his *property* in the *lease*, so unjustly *attacked*, and to secure the chance of renewing his lease; or, in case of Mr. Farley's resignation, or death, to procure a patent. For which purpose—he solicited Mess. Richardson and Tufnell, to sell and make over to him, their moiety in the patent for Mr. Farley's life;---he applied also to Mr. Whittington for the same purpose;---he proposed to Mr. Howell, that each should determine what they would give for the purchase of it, and by that means settle the matter between themselves;---he desired Mr. Richardson to apply (by means of his relation, Mr. Stonehewer, secretary to the duke of Grafton) for a patent in his own and his son's name;--he offered to give Mr. Richardson and captain Tufnell whatsoever in reason they should fix upon.---All these measures failing, he desired Mr. Newcome to deliver his case, report, or *testimonials*, and to communicate his proposals to the duke, in such manner as he should judge proper. However, to prevent this application to the duke, (*with whom he wished to have no concern*,) he offered Mr. Richardson a sum for his interest in Mr. Farley's life, which would have effectually secured his property, and which would have been accepted, had captain Tufnell consented. But this likewise proving ineffectual, by Mr. Newcome's declining what he had once assented to; and being excluded by the affidavit he had made in consequence thereof, from employing or applying to any other person but the duke himself; and considering the powerful interest operating against him, he found that the only alternative was,---either to submit to be deprived of his right in the lease; or to apply immediately to the duke, with whose appro-  
bation



bation the \* attack appeared to him to have been made, and in whom ONLY the power of redress seemed to be vested.

He therefore of himself applied to the duke of Grafton, judging, that when his pretensions were known and attended to, he should be protected in his legal right at least, if not rewarded for his service; and at the same time offered his money, in order to put himself on an *equal footing* with Mr. Howell; who, he made no doubt, had offered money on his part: for, he could no otherwise devise why the duke of Grafton (when the office was in his province, as secretary of state) had refused to interfere in procuring a REVERSION, tho' injurious to no one; and yet, when first lord of the treasury (though then, as by Mr. Polluck's affidavit, it was confessedly out of his province) should go further, and endeavour to procure a RESIGNATION, which would necessarily injure Mr. Vaughan, by annulling his right in an unexpired lease.---He could see no other reason, why Mr. Howell, who could only be supposed to have lucrative views, should have the preference given to him; unless some fee or consideration had been offered †. He concluded therefore, that Mr. Howell had either offered money, or that the place was intended to be given to him as a recompence for ministerial services. In the first of these cases, he imagined himself to have an equal right to make an offer, which appeared to him justifiable, (as being the only means left to defend and preserve his right in the lease,) in order to counter-act that of Mr. Howell's: or, in the latter case, he reflected with himself, that the money might be given as a reward to Mr. Howell, instead of the office.

The patent had been first *mortgaged*, afterwards *sold* under a *decree* of the court of chancery for the payment

\* As a further proof of this, (if any be wanted) the duke of Grafton told Mr. Richardson, that he would give the place to such persons as Mr. Bradshaw should recommend; which was the principal cause that determined Mr. Vaughan to make a personal application.

† Mr. Vaughan could not then entertain so mean an opinion of the duke, as to suppose the attack proceeded from revenge for the opposition made by him to ministerial measures.



of debts, had been since *bequeathed*, *sold*, and *demised*; and similar offices in Westminster-hall, held under the lord chief-justice for the time being, have for time immemorial been sold; therefore there was no reason to think it an office that was not saleable. Mr. Vaughan thus looked upon the offer in no other light, than merely as the giving one consideration for another; and at the same time was uninformed how the money arising from such grants were appropriated, whether into the treasury, the privy-purse, or otherwise. Whereas, he deemed bribery and corruption to be the offering money for doing something either immoral, bad in itself, or injurious to the state; and judging it clear of all such objections, he made the proposal with the less scruple: for it was in defence of his invaded *right*, and accompanied also with such *reasons*, as he made no doubt would fully justify his pretensions.

He likewise knew, that where there was no parliamentary or other equivalent interest to recommend, it was usual and customary to propose, and in consequence, to accept of a fine or perquisite for patents for lucrative places in the plantations not *judicial*, of the same nature with his own\*; and that places in England, similar to his,

\* The 3d of George the third, C. William Windham, esq; had the following grants by patent, *viz.*—"Secretary to the governor and council," and "clerk to the several courts in the island of Barbadoes,"---the "*reversion* of secretary to the island of Jamaica,"---and the "*reversion* of register in chancery in the island of Jamaica," which office with much more propriety might be deemed to concern *the administration and execution of justice, than that of Mr. Vaughan's*. Had the first (which comprehends the same trusts as are vested in the clerk of the supreme court in Jamaica) been in any respect judicial, is it probable that three offices in distant islands, should have been granted to one and the same person? But further,—about fifty years ago, the patent for "secretary to the governor and council," and "clerk to the several courts in the Leeward Islands" was granted to Wavel Smith, and Savil Cust, esqrs. and to the survivor.—Mr. Cust, the surviving patentee, is still living, but is only trustee for the benefit of the nephew and niece of the said Wavel Smith, deceased.—About seven years ago, *James Oswald*, esq; obtained the *reversion* of the said place for his son, then an infant. N. B. The secretary for the Leeward Islands is vested with the same trusts with which the patent vests the chief clerk of the supreme court in Jamaica. Mr. Vaughan apprehends, that his

O office



his, were the constant perquisite of the lord chief-justice for the time being. He was also certain, that many other places had been sold by those who had the direction of them †. Mr. Vaughan therefore supposed the custom to be so universal, that unless he complied therewith, it was impossible for him to obtain the office, though ever so capable of serving his country in it.

office cannot be judicial, not only from the nature of it, but likewise from the manner of the appointment to it. For all places which are judicial, are granted only and directly to such as are supposed properly qualified, with condition that they shall act in *person*: whereas, the patent for Mr. Vaughan's office hath no such limitation, but allows the patentee to depute any person to execute the office for him, a Mulatto or Negroe, being British subjects, not excepted.

† The following are selected from the numerous instances which may be produced. Sir Robert Walpole, when first lord of the treasury, appointed Mr. Parsons comptroller of the customs, with an annuity quartered upon him, for the payment of 500 l. *per annum*, to Sir Robert's daughter, Gabe Walpole's widow, but now lady Mary Churchill.—When lord Halifax was secretary of state, his friend Mr. Donaldson obtained appointments to several places in the colonies, all which he sold.—While the duke of Grafton was first lord of the treasury, colonel Burgoyne had the appointment of the collector of the customs at Exeter, a place *in the gift of the treasury*, which he sold, and a consideration was given for an annuity of 100 l. *per annum*, to be paid out of the profits to a third person.—And it may be asked, whether Mr. Burrell had not the appointment of the surveyor of the woods in England? and, whether a person is not quartered upon him, who is to receive 500 l. *per annum*?—Mr. William Smith, attorney at law, in Miles'-lane, had directions from a person to draw up a bond for him, in which he agreed to pay a gratuity to Mr. Stonehewer, secretary to the duke of Grafton, in consideration (which was therein fully recited) of his being appointed to a place. Mr. Smith accordingly drew up the bond and engrossed it. This gentleman, however, (as may be presumed) not being the person usually employed on such occasions, Mr. Stonehewer, in company with another person as witness, (since the attack upon Mr. Vaughan) carried the bond to him *executed*, and asked him, by whose authority he had drawn it? Mr. Smith answered, that he had done it by order of the Obligor. Mr. Stonehewer then told him, that the Obligor had no authority for so doing; and desired he would take notice, that he was now come to cancel the bond in his presence; which was accordingly done. But quere,---Doth not Mr. Watkins of Charing-cross, know of many appointments, in consequence of such contracts?

These



These reasons, with the persuasion that the PUBLIC, as well as himself, would be benefited by his obtaining, or being continued in that office, influenced his conduct.---He admits that self-interest might be, and was a stimulus to his pursuit. But had interest been entirely out of the question, it may be fairly concluded, from his conduct respecting Mr. Evans, that, he would have been equally solicitous for the appointment of a proper person to discharge the duties of the office.---Was it, could it be for the advantage of the public, that a place of such importance should fall into the hands of one, who being originally a surgeon by profession, could not be supposed the properest person to be entrusted with it, and whose motives appeared to be merely lucrative? Whereas, Mr. Vaughan may plead in support of his pretensions, that he did not give a bare promise or verbal assurance of his fidelity to the public. The large sums of money owing to him, and his real estate in that island, which would descend to his family after him, were, and would continue to be, a most unquestionable security (as being their own interest) that judgements should be regularly recorded, &c. upon which the security of general property so very much depended. Besides, he had given demonstrable proof of discharging the duties of that office with ability and fidelity; for, during the course of several years, when no way *personally* interested, he had shewn a real concern for the proper management of it: and when he was accidentally and unexpectedly appointed thereto, he went to Jamaica on purpose to methodize and regulate it, and gave liberal and much greater encouragement to persons of character and ability, to transact the business thereof, than had ever been done before;---the good effects of which appear by the several votes of the assembly relative to the office---Had Mr. Howell any one of these circumstances in his favour? And yet, instead of a preference being given to Mr. Vaughan, which seemed to be so justly his due, his property was invaded, and well nigh wrested from him; and there was an avowed design to give the place to one, who had by no means an equal, if the least, pretension.

Many objections have been made to the oath of secrecy, but the several reasons given in page 25, will readily occur to every candid reader, for Mr. Vaughan's vindication:



cation: the affidavit was in order to set Mr. Vaughan merely in the light of an indifferent person. And it may be added, that it was done likewise with a view to prevent any censure which might arise from Mr. Howell, his friends, or others; who might otherwise know the proposal, without knowing at the same time, the reasons and grounds of Mr. Vaughan's pretensions, (founded upon the public security in his appointment) which were too complicated for public notice.

It may be urged likewise in Mr. Vaughan's favour, irritated as he then was, and attending to his own case only, that, though the evil of offering money to a minister was apparent, (and, at a time when corruption was increased to such a high degree as to threaten the dissolution of the best government in the world) yet, persuaded as he was, that Mr. Howell had offered money, and that his withholding the offer would not have prevented the evil, he could not but think, *that his offer, of two evils* (the greatest whereof seemed impossible to be prevented) *would have been the least*; and if he acted in the same manner as his antagonist did, he intended no more than that it should operate to remove all bias from\*, and to leave the duke of Grafton at full liberty to follow his own judgement in the disposal of the office for the public good. Thus, it is but too notorious, that persons whose views are purely patriotic, when they endeavour to obtain a seat in parliament, are obliged to submit to the evil custom of the times, by treating, &c. nay, it may be doubted, in the present day, whether persons, however well qualified or entitled by merit, can expect, from that plea only, to serve their country in any station whatsoever, without first conforming to the usual custom; so that however Mr. Vaughan might wish a reformation, and that, *as general as is the evil*, yet when the good of the community in this instance was taken into consideration, he might think himself justified in complying with the corrupt practice

\* If Mr. Vaughan does the duke any injustice by these reflexions, he begs his pardon; but he finds it necessary to mention them, to shew the real motives which influenced his mind and conduct. Indeed, he at first told Mr. Sharp, that if the duke thought an indignity had been offered to him, he was ready to make an acknowledgement for the indiscretion; but this was considered as too slight an atonement for an offence committed against so chaste and virtuous a character.



of the times. However, he is now fully convinced, that nothing is more true than that maxim in morals, *Evil is not to be done, that good may come.*

If Mr. Vaughan had been conscious that he was acting an unjustifiable part, is it likely that he would have attempted to engage a person of Mr. Newcome's character to lend him his assistance? Or, is it likely, that Mr. Newcome, under such an idea, would have undertaken (which he did at first) to make the proposal? Nay, when Mr. Newcome declined, it was not from any apprehension that the action was criminal.

If Mr. Vaughan had considered the offer in the light of a corrupt bribe, it is improbable that he (who had so vigorously opposed undue influence and unconstitutional exertions of power, even though his opposition had proceeded from *factionous* views) would have made it in a manner so unguarded. A man in his circumstances, under such a persuasion, would have used very different methods.---But Mr. Vaughan, conscious of no guilt in the transaction, was free from all suspicion.---If he had thought the action to be criminal, he must have been aware of the consequences;---he must have been sensible, that he put himself as a delinquent, into the power of a person, from whom he could expect no favour;---he must have known, that as soon as his attempt was disclosed, his reputation and credit would be destroyed; and that he must for ever bid adieu to all future pretensions to a good name.---Is it then likely, that, with these sentiments and conviction, he should have been so void of prudence and sensibility, as to make such a proposal?

It may be said, that Mr. Vaughan hoped to buy that minister's silence by his offer: but surely he could not entertain so vain a hope. The sum, perhaps, might have been thought sufficient as a *fine* or *perquisite*, to secure a preference to a lucrative office, to which he had also so good a claim, and in the tender of which, no injustice was suspected; but, as a *bribe* from an obnoxious man, who was desirous of gaining an office in an *unwarrantable* way, it could not possibly be thought to have any influence.---If it had appeared to Mr. Vaughan in that atrocious light, however much (by the arts of his enemies) appearances



appearances may be against him, he would have been the last man in the world to have made such a proposal to any person, much less to any one in so elevated a station, as was the duke of Grafton.

Mr. Vaughan apprehends, that the open part he had taken in public affairs, both *before, after, and during* the whole course of these transactions, affords the strongest demonstration, that no advantage, emolument, or consideration whatsoever, could induce him to relinquish his *principles*, to abandon his *connections*, or to abate his *ardour* in the cause he had espoused \*, and that he chose rather

\* It will be necessary to bring some facts to prove what is here asserted.—Mr. Vaughan strenuously exerted himself on behalf of a man, in whose person he thought violence had been offered to the constitution, by administration.—He was one of the very first to propose and advertise a meeting of the *livery*, to consider of proper instructions to be given to their representatives in parliament;—and when they met, he had the happiness to find that they were determined to hold a common hall, at which they afterwards resolved *nem. con.* upon the instructions given to their members. This part of his conduct was *prior* to the attack made upon his property, of which he had not the least suspicion till February.—Between this last mentioned period, and the time when his letter to the duke was written, he opposed, as much as lay in his power, the address that was presented to the throne the 22d of March, under the specious title of ‘The Merchants, Traders, and other principal Inhabitants of the City of London:’—he used his utmost endeavours to promote the election of Mess. Sawbridge and Townsend to be aldermen, and afterwards to be sheriffs of the city of London;—he signed, and exerted himself in forwarding the Middlesex Petition, presented on the 24th of March;—he advertised the meeting of the livery of London, to consider of a petition to his Majesty;—he signed the requisition delivered (May the 9th) to the lord-mayor, that the livery might have the use of the Guild-hall;—and he constantly attended the committee (of which he was chosen chairman) appointed the 7th of May, to draw up the requisition, and a petition to his Majesty for redress of grievances.—Now Mr. Vaughan wrote his letter to the duke of Grafton, on the tenth of June.—After that time, he continued constantly to attend the meetings of the committee of the livery till the 5th of July, when the petition was presented, faithfully discharging the trust reposed in him;—since that time, the odium which hath been thrown upon his character, hath prevented his exerting himself in the cause of his country in the manner which he otherwise would have done: he appeals however to all who have heard him  
speak



rather to suffer in his fortune, by giving a large sum of money, than to be under any kind of tie or obligation \*, which might restrain him from supporting an *Honest Independence*.—Whereas, he must have known, on the other hand, that had he espoused and abetted ministerial measures, he would, most probably, have prevented the invasion of his property, and might have obtained the office; as before in equity his right, or claim, might be deemed vastly superior to that of his opponent.

Upon the whole, Mr. Vaughan having re-considered the matter, is thoroughly convinced that it is highly criminal in a minister to sell to the highest bidder, that high trust which the constitution vests in the crown, *the disposal of public offices*; and consequently, that it is wrong to tempt a minister to sell his interest in the direction or disposal of them †. Mr. Vaughan however asserts, that the error of his conduct was owing not to dishonesty, but imprudence; because when he made the offer to the duke, (circumstanced as he then was) it appeared to him justifiable from an opinion, (attending to his own case only)

speak on that subject, whether he has not uniformly expressed a strong dislike to the measures pursued by the ministry.--Was it Mr. Vaughan's private interest to have acted in this manner? Perhaps it may be said, that he intended first to make himself remarkable, and then to sell himself.---But where has he given the least intimation of this? Mr. Vaughan desires the duke of Grafton, or any other person who hath proof of this, to publish it to the world,--if he be a hypocrite, by their shewing him in his true colours, they may possibly do some service.

\* In proof of this, the following circumstance may be mentioned: as Mr. Vaughan was coming from the London Tavern, (June the 13th) in company with Mr. Townsend and Mr. Horne, he told them in a jocular manner, 'that he was then going to a person whom they little suspected;' Mr. Horne asked, 'who it was;' Mr. Vaughan replied, 'to the duke of Grafton, but he could assure them it was not to ask a favour.'

† As there is no statute-law by which the offering money for a place can be found penal, nor yet a single instance of any case in common law, where it hath been adjudged a misdemeanor, Mr. Vaughan trusts, that his indiscretion will produce a parliamentary enquiry into this source of corruption, from whence supplies may be drawn by a bad minister to subvert the constitution; and that in consequence, a law may be passed to make it penal, not only in the minister who receives, but in the person who offers to purchase a place.---If this should ever happen, Mr. Vaughan would consider his indiscretion and sufferings, as the happiest incident of his life.

that



that he was not deviating from the principles of integrity, when he submitted to a custom of the times, in offering money for a place, not judicial; and thinking he should thereby induce the minister to discharge his duty, in giving a preference to the man who had the best claim, and who, by an experienced service, was the most likely to do justice to the public. He pleads likewise, that, the injuries done to him, disposed him the more readily to cherish and give credit to this opinion;—a sentiment, which proceeded from knowledge, not only that the reversion of the office might be disposed of to another, whose pretensions were far inferior to his own, but that there was a design to rob him of his property in the lease.

The public have now a faithful and circumstantial account of the transactions which occurred in the course of this affair; they see the principles and motives upon which Mr. Vaughan acted, and though he cannot entirely exculpate himself, but rather confesses that he hath been guilty of great indiscretion, yet he maintains, that he had no other than an *honest* intention in it. If the *facts* recited, and this *apology*, should convict him of imprudence, yet he trusts they will still secure to him the character of a *man of honour and integrity*.

Mr. Vaughan is ready to submit his conduct to the equitable *tribunal* of the public, hoping that he shall never forfeit their favourable regard, or that esteem, which he hath always endeavoured to merit: if, however, any should still disapprove and censure, there is (that which will support him under all) a friend which hath never left him, the approbation of his own mind, and the testimony of a good conscience—of which he cannot be deprived.

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VOUCHERS: *Shewing the strict attention Mr. Vaughan hath paid, in order to have the clerk of the court's office in Jamaica under the direction of able and respectable persons.*

Extract of a letter to Mr. Vaughan, from Mr. William Mitchel, many years head clerk in that office; dated Jamaica, 3d April, 1769.

‘ I HAVE embraced this earliest opportunity of writing  
 ‘ to you an account of the death of Mr. Hamilton, whom  
 ‘ you



' you must have highly regarded, because the friendship  
 ' he has received at your hands, were such as shew it;  
 ' in his death I have lost the dearest, best and worthiest  
 ' friend that I had in this part of the world. He died  
 ' the first instant, at half after ten in the evening—  
 ' there is this that comforts me in the distress of mind  
 ' I am in now, and am sure it will you, that he died  
 ' with as fair a character as ever any man did, regretted  
 ' by every one; and, with propriety, it is in the mouth  
 ' of all, that he is a great loss to the community.—Mr.  
 ' Pinnock is this day to be sworn in to succeed Mr. Ha-  
 ' milton, he is now at Morant, where the governor is,  
 ' and has sent to this town for the oaths to be sworn in;  
 ' his general character is, that he is a young man of great  
 ' worth, and I hope will prosper under your appoint-  
 ' ment—particularly a man of Mr. Pinnock's great worth  
 ' and merit, and am happy in the thoughts of his doing  
 ' well.'

Copy of a Letter from Richard Welch, Esq; one of the  
most eminent Counsellors at Law in Jamaica.

Jamaica, 10th April, 1769.

' Dear Sir,

' WHEN you find this letter proceeds from friendship  
 ' to a gentleman I esteem much, and who practises at  
 ' the same bar with me, I hope you will excuse the liber-  
 ' ty I take.

' You must know that Mr. Pinnock, by virtue of your  
 ' power, is now in your office; as Mr. Hamilton and  
 ' Mr. Atkins are both dead;—from my knowledge of  
 ' him for several years, in my opinion, you cannot have  
 ' a more diligent, faithful, safe, and respectable gentle-  
 ' man to fill that office.—By placing him in your power,  
 ' you must have formed a good opinion of him yourself,  
 ' and justly; and by continuing him, I will venture to  
 ' say, you ~~will~~ not only serve him, but yourself, and (I  
 ' think I can answer for the whole bar, as well as myself)  
 ' you will certainly oblige them, and me particularly, by  
 ' giving them an officer, that must give full satisfaction

P

' in



“ in the discharge of his duty, and do honour to his pro-  
 “ fession. I am,

“ Dear Sir, with respect,

“ Your most humble servant,

“ RICHARD WELCH.

“ Samuel Vaughan, Esq;”

Extract of a letter from sir George Hampson, bart. coun-  
 fellow at law, to Mr. Vaughan, dated Jamaica, April  
 10, 1769.

“ Mr. James Pinnock being nominated by Mr. Farley  
 “ and you, to hold the office of clerk of the court, was,  
 “ without difficulty, sworn in by the governor on the  
 “ 5th instant.—The succession has fallen according to  
 “ your own appointment, which was undoubtedly done  
 “ from a knowledge of, as well as good-will to the feve-  
 “ ral persons named.—I do not presume to recommend,  
 “ ---the matter stands much better, and I dare trust your  
 “ own knowledge of the present officer ;---he has friends  
 “ ready to be strictly responsible for him, if required :  
 “ Mr. Cuthbert and myself offer ourselves for this pur-  
 “ pose ; and in case distance or sufficiency should be ob-  
 “ jected to, I believe Mr. Samuel Bean and Mr. Freeman  
 “ (*in London*) will be accountable for us.”

Extract of a letter from Lewis Cuthbert, esq; (an eminent  
 merchant and planter) to Mr. Vaughan, dated Jamaica,  
 April 3, 1769.

“ Mr. James Pinnock, who is now in the country,  
 “ I am informed, is the next in deputation under you,  
 “ for the office of clerk of the court of this island, which  
 “ intitles him to the immediate appointment. May I  
 “ presume, sir, to beg your continuance of that gentle-  
 “ man to the deputation ? You will, by so doing, serve a  
 “ very deserving young man, and the representative of  
 “ his father, whose family already lies under so many ob-  
 “ ligations to you. You will also serve yourself, as I am  
 “ so well satisfied of his ability, honour and integrity,  
 “ that I would most readily stake all I am worth to insure  
 “ them.”

N. B. By letters received (at the same time with the  
 foregoing) from a person of ability and reputation,  
 there was offered an advanced rent of 500l. sterling,  
 more



more than what Mr. Vaughan had set it for to Mr. Pinnock ; but Mr. Vaughan preferring the serving one whom he highly esteemed, and whom he was satisfied would give general satisfaction to the public, rejected the offer, and continued Mr. Pinnock, without requiring more than his own bare security for payment of the rent, &c.

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*A NARRATIVE of Transactions, since the Rule against Mr. Vaughan was made absolute.*

The 28th of November, 1769, Mr. Vaughan was served with a Copy of the following Process.

GEORGE the third, by the grace of God, of Great-Britain, France and Ireland, king, defender of the faith, &c. To Samuel Vaughan, greeting. We command you, by firmly enjoining you, that, laying aside all excuses and pretences whatsoever, you personally be and appear before us at Westminster, on Friday, next after fifteen days from the day of St. Martin, to answer to us of such matters and things as shall be then and there objected against you on our behalf, and further to do and receive all those things which our said court shall then order concerning you ; and this you are not to omit, under the penalty of one hundred pounds, to be levied upon your goods and chattles, lands and tenements, if you shall make default in the premises. Witness WILLIAM LORD MANSFIELD, at Westminster, the twenty-seventh day of November, in the tenth year of our reign.

By the Court ——— BURROW.

*(Endorsed)*

James Burrow, coroner and attorney of our lord the king, for our said lord the king, prosecuteth this writ against the within-named Samuel Vaughan, upon an information exhibited against him by the said James Burrow, esq; in the court of our said lord the king, before the king himself, for certain trespasses, contempts, and misdemeanors, whereof he is impeached.

The 30th of November the following appeared in the London Evening Post.

P 2.

The



The following is a GENUINE copy of the letter written by Samuel Vaughan, esq; to his grace the duke of Grafton, as read in Mr. Vaughan's affidavit in the court of king's bench, on Monday last.

To his G——e the D——e of G——n.

“ My Lord,

“ To a man always engaged in business, your grace  
“ cannot expect any further circumlocution than what  
“ may immediately relate to the point in question; I am  
“ therefore to acquaint you, that if you can procure  
“ for my son, the reversionary patent of clerk of the  
“ crown for the island of Jamaica, I will, in considera-  
“ tion, pay you the sum of five thousand pounds.

“ That you may not look upon this as a *mere* propo-  
“ sal, I inclose you these affidavits, which will convince  
“ you of the certainty of the payment, as well as the lit-  
“ tle risk you run in a detection from my communica-  
“ tiveness. I foresee you will startle at the name of the  
“ proposer; but be assured, if you serve me in this par-  
“ ticular, you will bind me to you for ever. I must,  
“ however, request, that if this is not immediately in  
“ your power, or, that you should not choose to be an  
“ agent in this affair, you will return me this letter with  
“ the inclosed affidavit.

“ I am, my lord, &c.

“ S. V.”

The above letter appeared the next morning in the Public Advertiser, the Gazetteer, the Morning Chronicle, and the Ledger.——December the 1st, Mr. Pashley, (Mr. Vaughan's clerk) went to Mr. Miller, printer of the London Evening Post, and acquainted him, “ that  
“ he was in court when Mr. Vaughan's affidavit was  
“ read; that Mr. Vaughan's letter was not recited in it,  
“ but that he had heard it when read separately in court;  
“ and had likewise seen an office copy of it, and from  
“ thence could assure him, that the letter he had pub-  
“ lished was not the true one.” Mr. Pashley then de-  
sired, that the person who sent it might be given up; but this Mr. Miller refused, saying, “ that he was much de-  
“ ceived if he had not good authority for it” Mr. Pash-  
ley then told him, “ that Mr. Vaughan, in case the let-



ter was not contradicted, would commence a prosecution against him," and afterwards went to the publishers of the other papers, giving them also the same information. It was not, however, contradicted by any of the papers, except the *Public Advertiser*. The next day, Mr. Pashley went a second time to Mr. Miller, assuring him, that there was not a single sentence in the letter he had published, similar to the purport of the genuine letter, and again desired that he would give up the author. Mr. Miller again refused, and with some degree of exultation said, "that he would confirm its authenticity, if not literally, at least *materially* so." Mr. Pashley then told him, "that a prosecution would certainly be commenced against him, on account of the injury done to Mr. Vaughan's character." Notwithstanding what then passed, that very evening, December the 2d, the following article appeared in the same paper.

"A paragraph appearing in the *Public Advertiser* of this day, assuring from *authority*, that the letter in *this paper* of Tuesday last, signed S. V. and addressed to the D— of G—, was spurious, we still assert its *authenticity*; if not literally, at least *materially*, as read in his *affidavit* on Monday last. If the inserter of that paragraph will favour the public (which no doubt he can) with a literal copy, *they* will be the best judges of the difference."

Immediately after the above paragraph, followed a spurious speech, published as "LORD MANSFIELD's speech, as delivered by him after the arguments were concluded for, and against Mr. Vaughan, in the king's bench on Monday last,"——which letter, paragraph, and speech were evidently published with intent to misrepresent Mr. Vaughan's conduct, to set him in an odious light, and to prejudice the minds of the people in a cause depending in court: he therefore took the opinion of his council how he might punish Mr. Miller for his injurious publications, and was told, that, as the court was a court of justice and not of honour, an action would not lie, but that when the court was sitting, on motion being made, an *attachment* would no doubt be granted.

These publications, from the confident manner in which they were issued, and afterwards asserted to be authentic, had such an effect, that Mr. Vaughan found himself  
shunned



shunned and avoided both by his friends, his acquaintance, and the world in general; all being deceived by the seeming authenticity of them. Contrary therefore, to his settled determination of giving opportunity for a trial, before he published a syllable in his own defence, he was at length prevailed upon to publish his real letter to the duke of Grafton, which removed in a great measure the odium occasioned by the above invidious articles.

The 30th of November, it was proposed to Mr. Vaughan, that he should meet two friends, who both wished him well, and were willing to give him their advice. Accordingly, upon the 1st of December, he met Mr. alderman Trecothick, and George Udney esq; when Mr. Udney, after discussing Mr. Vaughan's affair, said, that, as Mr. Vaughan had done an indiscreet action, for which a jury must find him guilty of a misdemeanor, if he was to give his opinion as a friend, he should advise him to acquaint Mr. Wallace, that he was willing to write a letter to the duke of Grafton, acknowledging a concern for the indiscretion;—this, he doubted not, would be accepted, and prevent all further proceedings; and would consequently restore Mr. Vaughan to his peace, business and family; adding also, that he had better leave public affairs to those better qualified for that purpose, and to whose sphere it more properly belonged. Mr. Vaughan thanked him for his advice, and asked him, “whether he  
“ had read his affidavit in answer to the duke of Grafton?” Mr. Udney said, he had not; but, as he was well acquainted with, and was a neighbour to Mr. Wallace and Mr. Sharp \*, that he was no stranger to Mr. Vaughan's proceedings with respect to the duke of Grafton; and that Mr. Wallace had shewn him his brief, wherein his letter and first affidavit were recited. Mr. Vaughan answered, “that as Mr. Udney had not seen his affidavit in answer,  
“ and much less was acquainted with the facts which  
“ were not necessary to be mentioned on shewing cause  
“ why the rule should not be made absolute, he could  
“ not form a judgement of the materials for his defence;  
“ that he had already offered to Mr. Sharp to make an  
“ acknowledgement, and had done it upon record; but as  
“ that was rejected, although his property had been in-

\* Mr. Wallace is council, and Mr. Sharp solicitor for the prosecutor.

“ vaded,



“ vaded, and he had been robbed of his good name ever  
 “ since the beginning of August last, and his character  
 “ still continued to be traduced, even by a forged letter  
 “ of that day ; he added, that he had little reason to ex-  
 “ pect candour or honour from his prosecutor ; and there-  
 “ fore, should he make such a proposal, it might not be  
 “ accepted, and perhaps be made a bad use of against  
 “ him.” Mr. Udney replied, that though he could not  
 answer that the letter would not be published, yet he would  
 pledge his honour and reputation, that it should not be  
 made use of *in court* against him. Mr. Vaughan replied,  
 “ that it was neither *fine* nor *punishment*, but his CHA-  
 “ RACTER, which was the grand object of his attention ;  
 “ and, though he was willing to do any thing consistent  
 “ with the character of an honest man, to get rid of a  
 “ troublesome and expensive prosecution, yet he would  
 “ make *no proposals* whatsoever ; if the duke would ex-  
 “ pressly declare what he expected from him, he *then*  
 “ would give an answer otherwise after trial he  
 “ would publish his justification.” Mr. Udney replied,  
 should Mr. Vaughan be found guilty, as he most likely  
 would, the world would form their opinion from that de-  
 termination, and would pay no regard to any publication,  
 insisting further, that Mr. Vaughan neither could, nor  
 durst publish his case, as it would evidently be a contempt  
 of court. Mr. Vaughan said in return, “ that he would  
 “ not arraign the justice of the court, but would kiss the  
 “ rod, and submit to the laws of his country ; that done,  
 “ he was positive that he had a right to publish the motives  
 “ which led him into the indiscretion ; but, supposing it  
 “ otherwise, he would do it, though confinement for  
 “ life, or even death itself should be the consequence ;  
 “ for if *truth* cannot be avowed and adhered to, life itself  
 “ would be burthensome, and not worth preserving.”  
 They then parted as they met.

December the 2d, Mr. Vaughan sent his clerk to  
 Joshua Sharp, esq; to request that the information might  
 be filed as soon as possible, that Mr. Vaughan might be  
 prepared to come to issue, early the next term. Mr.  
 Sharp answered, that he had caused the process to be im-  
 mediately served on Mr. Vaughan for that purpose ; and  
 that he was preparing the information for council, which  
 should be filed as soon as possible. After that time, Mr.  
 Vaughan's attorney sent several times to Mr. Sharp, re-  
 questing



questing the information might be filed, but it was not done before Hilary term, and then laid in the county of Middlesex; setting forth the letter and affidavit, as having been received on the 10th of June in Westminster; but the *case* and *report* in his justification were entirely suppressed.

To the above transactions, since the rule was made absolute, may be added the following circumstances, which seem to shew a design of ensnaring Mr. Vaughan, and of inducing him to enter into measures to his prejudice.

The latter end of September, a person of family and fortune, sent for a near relation of Mr. Vaughan's out of the city, to acquaint her on good authority, that the patent he had been in pursuit of, was granted to Mr. Hallowell, late collector in Boston (Mr. Vaughan's brother-in-law) and that in consideration of this service, the duke had received six thousand pounds, which Mr. Hallowell had borrowed for that purpose, from a friend then named. To this story (however specious the appearance) Mr. Vaughan gave not the least credit, and therefore never mentioned it to any one; being likewise aware, that had he, it might have been construed into a breach of privilege. However, as Mr. Hallowell was intimately acquainted with Mr. Bradshaw, Mr. Pownall, &c. and had a right to expect, and indeed, was promised to be provided for, by the gentlemen of the treasury, Mr. Vaughan thought that the patent might be thus settled on conditions; especially as his good friend, governor Bernard, was just arrived from Boston, for whom it might be supposed a more ample provision was intended, as a reward for the *eminent services rendered to his country*; it was not improbable, but the patent might be made out in both their names, and the latter quartered upon the former for a small part of the profit.

A short time after Mr. Vaughan's affair was made public, a certain distinguished person, late of the law, said, that *transportation* might probably be Mr. Vaughan's fate; and since the rule was made absolute, an eminent counselor told a friend of his, that there was no intention to fine, but to render him infamous by *pillory*: these hints seem evidently thrown out with the design of intimidating Mr. Vaughan into a submission, which might be to his discredit. If that was the case, they had not the  
desired



desired effect. Mr. Vaughan, when he heard the latter report, answered, "Should he be brought to that, he would mount the pillory with exultation; and though he should be very sorry to lose his ears, yet, should *that loss* be the means of public good, he should deem it a noble sacrifice, and not regret the loss."

The 28th of November, captain Hughes, a relation of Mr. Vaughan's, who was bound in a few days for Jamaica, acquainted him, that Mr. Calaghan, an eminent attorney, in Pope's-head-alley, had told him, he had his doubts about Mr. Vaughan's attorney; and that he had something very interesting to communicate, could he rely upon Mr. Vaughan's honour. Mr. Vaughan returned his thanks, and said, that he should be glad to see him. At three o'clock on the same day, Mr. Calaghan came to Mr. Vaughan, and dropping all manner of complaint against his attorney, said, that he should be glad to serve a person so hardly dealt with; that he was well versed in the law; that he knew a case in point, which proved that the offer was no misdemeanor,—was intimate with one who had the confidence of the duke of Grafton, whom he would consult; and doubted not, but that Mr. Vaughan might easily get quit of this troublesome business, and at the same time preserve his reputation. Mr. Vaughan replied, he should be glad to do any thing which was consistent with the duty and character of a man of honour, to prevent a troublesome and expensive prosecution. Mr. Calaghan then said, that he should see his friend in a few days, and would call with further information.—December the 1st, Captain Hughes acquainted Mr. Vaughan, that Mr. Calaghan wished to see him at his office: Mr. Vaughan accordingly went, but did not find him at home. Next day, December 2d, Mr. Calaghan came to Mr. Vaughan at three o'clock, and after some conversation, hinted that an apology to the duke of Grafton might set all to rights; that he was very desirous of introducing him to Mr. Murphy, a counsellor and commissioner of bankrupts, from whom he had just parted, as that gentleman was extremely intimate with the duke of Grafton, the lord chancellor, lord Mansfield, serjeant Glynn, &c. and wished to serve Mr. Vaughan; that he should only carry Mr. Vaughan to Mr. Murphy, and would then leave them together. Mr. Vaughan replied, that he



should make no proposal, until he knew what was expected; that he was much obliged to Mr. Murphy for his friendly intentions; but as he had no knowledge of him, and as the affair was made public, and the nature of his defence required no secrecy, he saw no reason for a private meeting with any one; but that he should be glad to meet Mr. Murphy and Mr. Calaghan, with his friend, Mr. Alderman Trecothick. That, not seeming to be relished, he named Mr. Richard Oliver. This likewise not being approved, and Dr. Dawson just entering the house, he proposed him or any other gentleman of character. Mr. Calaghan replied, that he could say nothing to the proposal, without first acquainting Mr. Murphy. He then assured Mr. Vaughan, that Mr. Murphy had the confidence of lord Hillsborough, in whose department the office lay, and that he was the proper person to procure what Mr. Vaughan had been in pursuit of. He said further, that he did not doubt, but Mr. Vaughan might yet procure it, and matters be settled to his satisfaction. To this Mr. Vaughan made no reply; but the instant he was gone, called in his friend, Dr. Dawson, and acquainted him with what had passed; adding, that he would spurn with indignation an offer of the reversion on these terms, from the duke of Grafton himself.—Mr. Vaughan hath heard nothing further from Mr. Calaghan.

The first day of Hilary term, the information (consisting of forty sheets) was filed in the Crown-office, among other things setting forth, “ Be it remembered, that  
 “ James Burrow, esq; coroner and attorney of our present  
 “ sovereign lord the king, in the court of our present  
 “ sovereign lord the king, before the king himself, who,  
 “ for our said sovereign lord the king in this behalf, pro-  
 “ secuteth in his proper person,”——that “ He the said  
 “ Samuel Vaughan (late of London, merchant) on the  
 “ 10th of June, in the ninth year of the reign of our  
 “ sovereign lord the king, with force of arms, at West-  
 “ minster aforesaid, in the county of Middlesex, un-  
 “ lawfully, wickedly, and corruptly did propose and offer,  
 “ and cause to be offered to the said duke of Grafton,  
 “ that in case he the said duke of Grafton would procure  
 “ our said sovereign lord the king, by his letters patent  
 “ under the great seal of Great-Britain, to grant the re-  
 “ version of the said office of chief clerk to attend the  
 “ supreme



“supreme court above mentioned, for the natural lives  
 “of three sons of the said Samuel Vaughan, named Ben-  
 “jamin Vaughan, William Vaughan, and John Vaughan,  
 “or the lives of three other persons to be nominated by him  
 “the said Samuel Vaughan, upon the same conditions as  
 “are mentioned in the said letters patent of his said late ma-  
 “jesty; that then he, the said Samuel Vaughan would, upon  
 “such letters patent of our said sovereign lord the present  
 “king, being delivered to him the said Samuel Vaughan,  
 “pay into the hands of one Henry Newcome (a person  
 “well known to the said duke of Grafton) or to his  
 “order, 5000l. of lawful money of Great-Britain, to  
 “be paid to the said duke of Grafton, for procuring our  
 “said sovereign lord the king to grant the reversion of  
 “the said office in manner aforesaid——unlawfully,  
 “wickedly, corruptly desiring, intending and contriving  
 “to tempt, seduce, and corrupt the said Augustus Henry,  
 “duke of Grafton, so being one of the commissioners for  
 “executing the office of treasurer to the exchequer of our  
 “said present sovereign lord the king——and the first-  
 “named commissioner in the letters patent of our said  
 “sovereign lord the king, under the great seal of Great-  
 “Britain, in that behalf granted, and also one of the  
 “privy-council of our said present sovereign lord the  
 “king,——and in great trust and confidence with the  
 “said lord our king aforesaid, to prostitute and betray  
 “the duties of his said offices and stations, and the trust  
 “and confidence so placed and reposed in him by our said  
 “present sovereign lord the king,——to the great dis-  
 “honour of the said duke of Grafton, to the evil and per-  
 “nicious example of all others in the like case offending  
 “against the peace of our said lord the king his crown and  
 “dignity,” &c. &c.

The 31st of January, issue was delivered by Mr.  
 Vaughan's attorney.-----Since the term, several persons  
 have solicited Mr. Vaughan to suppress his intended publi-  
 cation, as it might irritate, and occasion the bringing the  
 cause to trial next term; nay, two of his council gave their  
 opinion, *to publish nothing at all*, a third, *not to publish until*  
*after next term*, but Mr. Vaughan held the prudential rea-  
 sons assigned, with respect to their client's personal inter-  
 est, very cheap, when compared with the loss of his re-  
 putation, as he prefers the preservation of his *moral character*



as an *honest man*, to the saving any fine, or preventing any punishment, that *ministerial influence* can cause to be inflicted upon him.

After this plain and faithful narrative of the whole transactions, the following *reflection* is obvious.

Had the duke of Grafton intended to have brought Mr. Vaughan to a trial, he might, and probably would, have moved the court in Trinity Term, or at least early in Michaelmas Term, and brought it to issue in the after sittings. But the motion was not made until the latter end of Michaelmas Term, when the rule was made absolute; yet the information was not filed before the first day of Hilary Term. Issue was delivered within the eight days, but no notice of trial given, as usual in other cases.—It is hard to conceive with what views those delays were made, unless the duke was desirous,—to avoid an examination;—to prevent Mr. Vaughan from exerting his endeavours in the *public cause* he had espoused;—to put him also to a very great expence;—to intimidate him into a mean submission, or an acknowledgement injurious to his honour;—or to continue him under the weight of public odium, and thereby prepare the world for whatever punishment a *ministry* may order and procure, however *unprecedented*.

## A P P E N D I X.

*Shewing from the printed votes of the assembly in Jamaica, the state of the public offices in that island; the complaints made to the assembly against every one of them, that of the clerk of the supreme court only excepted. From this negative, together with the positive proof before given of the irreproachable conduct of Mr. Vaughan in the direction of that office, it may be presumed that he had some pretence to lay in his claim, if not to expect a preference.*

REPORT made to the assembly of JAMAICA.

“ *Martis, 30 Die, Octobris 1764.*

“ Mr. Edwards, from the committee appointed to inspect  
“ spect



“ spect into the state and condition of the several public  
“ offices in this island, reported, as follows”.

“ Mr. Speaker,

“ The committee appointed to inspect into the public  
“ offices of this island, in obedience to the order of the  
“ house, have enquired into what fees, the persons hold-  
“ ing or officiating in the several public offices of this  
“ island are intitled to by law, and what fees now are,  
“ and have been taken for business done in the said of-  
“ fices.

“ That your committee for the satisfaction of the house  
“ have annexed to this their report, the several accounts  
“ transmitted to them by the secretary, clerk of the court,  
“ clerk of the crown, register of the court of Chancery,  
“ and clerk of the patents, provost-marshal, receiver-  
“ general, collector, and naval officer of that island,  
“ marked with the letters A, B, C, D, E, F, G, and H,  
“ wherein they have in the said several accounts so by  
“ them transmitted to your committee, distinguished the  
“ fees they are respectively intitled to by law, and such  
“ fees as the said officers have taken, and do take by usage  
“ and custom.

“ That such fees so by them taken under colour and  
“ pretence of usage and custom, are in many instances  
“ charged at four times more than is allowed by law, and  
“ that in general all, in most of the articles charged in  
“ the said respective accounts (*except in the accounts of the*  
“ *clerk of the court and provost-marshal-general* \*) are char-  
“ ged much more than is warranted by law.

“ That

\* The provost-marshal hath five per cent upon all returns. This considerable allowance was made (to defray travelling expences, as they were to execute their business in all parts of the island, and) because of the few actions then brought, but now the number and amount are immense.—The clerk of the court's fees now taken, are the same as established by law in 1711, *viz.* for writs of summons and arrest, common plea or appearance, continuance each court, rule to lay by, receiving and publishing a verdict, or default, 7d.  $\frac{1}{2}$  each. Writs of summons, arrest replevin, subpoena and foreign attachment, extract, discontinuance or nonsuit, taxing bill of costs, filing recognizance and affidavits in court, or search except by an attorney whose name is on record for the plaintiff or defendant, 1s. 3d. each. Filing a declaration



“ That such exorbitant charges are a manifest imposition upon the public, and are in direct violation of, and contrary to, law.

“ By which illegal and unjustifiable means, the public have not only been imposed upon, but have been greatly injured, and large sums of money have been by such officers raised upon them contrary to law.

“ That these impositions are in a great measure (in the opinion of your committee) owing to the large annual sums of money by the respective deputies of the several patentees, paid to such patentees in England, who upon every new deputation or appointment usually raise the rents of their respective offices, upon their respective deputies here.

“ That the patentees who reside in England in general set up their several offices at auction or public vendue, and the person who bids the most, and gives the best security in England, for the payment of the rent, constantly obtains the same; and such extraordinary rents being given, (is, in the opinion of your committee) one great reason that the deputies make such impositions on the public of this island.

“ That since the year one thousand seven hundred and eleven, the business in all the offices are considerably increased, and your committee are of opinion, that if the several deputies in this island did not give to the patentee such large and exorbitant rents for their offices that the fees established by that law would be very sufficient.

“ That by the said act for establishing fees, it is among other things enacted, that in case any officer, or any other person for them, shall, on any pretence whatsoever, presume to ask, take, demand, or receive, any greater or other fees, sum or sums of money, or other reward, save what is herein before prescribed, (except what shall be voluntarily given, or allotted to lawyers

tion and attesting a copy thereof, bond of foreign attachment and replevin, writ of *habeas corpus*, execution *venditioni*, Withernam and *scire facias*, filing a declaration during the setting thereof, special plea signed by council, or entering up satisfaction or superseatas on record or other returns, 2s. 6d. each. Entering up and recording judgments, or copies thereof, 5s. each, current money of the island of Jamaica.

“ or



“ or practitioners in law by their clients) every such of-  
 “ ficer, person or persons so asking, demanding, taking,  
 “ or receiving, shall, for every such offence, respectively  
 “ forfeit the sum of one hundred pounds, one moiety  
 “ whereof shall be to her majesty, her heirs and successors,  
 “ for and towards the support of the government of this  
 “ island, and the contingent charges thereof; the other  
 “ half to the informer; or him or them that shall sue for  
 “ the same: and be further incapacitated to bear any such  
 “ office, or such place of trust; and such lawyer or attor-  
 “ ney shall be incapable of practising any more in any of  
 “ the courts of this island.

“ That your committee find a proclamation was issued  
 “ by his majesty’s special command, by his excellency the  
 “ governor, dated the twenty ninth day of September,  
 “ one thousand seven hundred and sixty four, whereby (a-  
 “ mong other things) it is declared to be his majesty’s  
 “ royal will and pleasure, that any officer that shall demand  
 “ and receive any other than the fees established by au-  
 “ thority, shall forthwith be removed from his said office,  
 “ and shall also be prosecuted by his majesty’s attorney-  
 “ general of this island, for such exactions, with the ut-  
 “ most severity of the law.

“ That by such his majesty’s most gracious proclamati-  
 “ on, any person or persons injured by any public officer  
 “ in this island, who shall demand or receive, any other  
 “ than the fees established by proper authority for any bu-  
 “ siness to be transacted, or done in such several offices,  
 “ may apply (if he or they shall think proper) to his ex-  
 “ cellency the governor, for such public officer to be pro-  
 “ secuted by law, for any exactions, he or they may take  
 “ or impose in his or their respective offices, upon any  
 “ person or persons whatsoever contrary to law.

“ That from such his majesty’s most gracious intenti-  
 “ ons, your committee have reason to hope that the sever-  
 “ al public offices will for the future not ask, take, de-  
 “ mand, or receive any greater or other fees, than what  
 “ is established by law, and which if they or any of them  
 “ should presume to do, your committee are well satisfied  
 “ from the known justice of his excellency the governor,  
 “ that he will order such officer so violating the said act  
 “ and proclamation, to be immediately displaced from  
 “ such



“ such office, and also to be prosecuted with the utmost  
 “ severity of the law.  
 “ Resolved, that the house do agree to the said re-  
 “ port.”

---

“ JAMAICA *Is.*

“ By the King,

“ A P R O C L A M A T I O N .

“ FORASMUCH as we have received frequent com-  
 “ plaints, that several public offices in our colonies and  
 “ plantations in America, have taken and received, by co-  
 “ lour of their several offices, sundry exorbitant fees for  
 “ business transacted therein, and whereas from represen-  
 “ tations lately made unto us, there is reason to appre-  
 “ hend, that such unwarrantable demands and exactions  
 “ still continue in some of our said colonies, particularly  
 “ on the survey and passing of patents for lands; we have  
 “ the justest indignation at such shameful and illegal prac-  
 “ tices, which do not only dishonour our service, but also  
 “ operate to the prejudice of the public interest; by ob-  
 “ structing the speedy settlement of our colonies: in or-  
 “ der therefore to testify our utmost displeasure towards  
 “ such unwarrantable and dishonourable practices, and  
 “ as far as in us lies, to prevent the continuance there-  
 “ of, and the evil consequences arising therefrom? we  
 “ have thought fit to issue this our royal proclamation,  
 “ utterly prohibiting and forbidding all such practices for  
 “ the future; and we do hereby order, command and  
 “ strictly enjoin and require all public officers whatsoever,  
 “ in this our island of Jamaica, that they or any of them,  
 “ do not presume to demand or receive, from any of our  
 “ loving subjects, or any other person whatsoever, any o-  
 “ ther fees for public business transacted in their respective  
 “ offices, than what have been established by proper au-  
 “ thority, on pain of our high displeasure; and it is our  
 “ royal will and pleasure, that every officer, who shall de-  
 “ mand or receive any other than the fees hereby allowed,  
 “ shall forthwith be removed from his said office; and shall  
 “ be prosecuted by our attorney-general of this our island  
 “ for



“ for such his action, with the utmost severity of the  
“ law.

“ Witness his excellency William Henry Littleton  
“ Esq; captain-general, governor and commander in  
“ chief in and over this our said island of Jamaica,  
“ and other the territories thereon depending in A-  
“ merica, chancellor and vice-admiral of the same,  
“ at St. Jago de la Vega, the 29th of September,  
“ *anno Dom.* one thousand seven hundred and sixty  
“ four.

“ WILLIAM HENRY LITTLETON.

“ By his excellency's command

“ THOS. HAY, Secretary.

“ GOD SAVE THE KING.”

In Oct. 1764, upon an affidavit made by Philip Philip Liviston Esq; the governor ordered the attorney general to file informations against James Charles Sholto Douglas Esq; collector, William Murray Esq; naval officer, and John Lumsden deputy secretary, for taking of the said Liviston more fees than were prescribed by law, and information *ex officio* was accordingly filed the 30th November, 1764. Issue was made up February, grand court, 1765, and information sent down to be tried as of April assize following. The attorney general, by order of the governor, on coming into court informed Mr. Liviston's solicitor, that the informations against the public officers could not be tried for particular reasons \*.

Copy of his majesty's order in council,  
dated 21 June, 1765.

“ Whereas the honourable Nicholas Herbert Esq; An-  
“ drew Stone † and John Pownall ‡ Esqrs holding and posses-  
“ sing, under letters patent of his late majesty, the several  
“ offices of secretary, register in Chancery, and naval offi-  
“ cer of his majesty's island of Jamaica, in behalf of them-  
“ selves and their deputies in the execution of the said offi-  
“ ces, and also James Charles Sholto Douglas §, collector

\* As appears by the votes of the Assembly 11 July, 1766.

† Who was secretary to the late duke of Newcastle.

‡ Secretary to the Board of Trade.

§ Who bought the place of Mr. Donaldson.



of the customs in the said island, have, by petition to his  
 majesty at this board, set forth among other things, that  
 the house of representatives of the said island have thought  
 proper (in consequence of a report of a committee of  
 that house appointed to inspect the public offices) to ar-  
 raign the conduct and justice of the petitioners, to con-  
 demn the practice of taking fees established by custom and  
 long usage, and to declare that if the public offices should  
 continue to take the same, they ought to be displaced and  
 prosecuted with the utmost severity of the law, which  
 declaration the petitioners alledge has excited several vex-  
 atious suits against some of the petitioner's deputies,  
 grounded upon a proclamation lately issued in the said  
 island, which has no reference to the matter in question,  
 and upon an obsolete act passed in that island in the  
 year 1711, and the petitioners humbly prayed, that his  
 majesty would be graciously pleased, by his order in coun-  
 cil, among other things, to establish such customary fees  
 as have been of long usage taken in the several offices of  
 secretary, register in Chancery, naval officer, and col-  
 lector of the customs, or to direct the governor of Ja-  
 maica, with the advice of the council, to establish a table  
 of such additional fees to those regulated by the act 1711,  
 as shall appear to be adequate and competent to the said  
 offices in their present state, and in the mean time, and  
 until such table of fees can be settled, to support the pe-  
 titioners in their just rights, and accustomed fees, and  
 to stay any proceedings, suit or action which may be  
 commenced against them, grounded on the said act of  
 1711.

His majesty having taken the same into consideration,  
 and received the opinion of the lords commissioners of  
 trade and plantations, and also of a committee of the  
 lords of his majesty's most honourable privy council there-  
 upon, is hereby pleased, with the advice of his privy  
 council, to order that the governor or commander in  
 chief of his majesty's island of Jamaica for the time be-  
 ing, do exert the power legally vested in him for pro-  
 tecting the petitioners or their deputies, against any suits  
 or actions, that may be brought against them, upon the  
 account of their having taken such fees, as have by long  
 usage been taken by them, or their predecessors in office,  
 altho' the same should have exceeded the rates settled by  
 the



‘ the said act of 1711, and that the said governor or com-  
 ‘ mander in chief, do signify to the assembly, that his ma-  
 ‘ jesty will be ready to concur with the legislature of that  
 ‘ island, in any proposition for a revival of the law of 1711,  
 ‘ and establishing and fixing such fees for public offices,  
 ‘ as shall be adequate to the present state of their business,  
 ‘ and the circumstances of the times.’

(Signed) ROBERT WALPOLE.

Copy of the governor's letter to the attorney general.

*Spanish Town, August 30th, 1765.*

‘ S I R,

‘ IN pursuance of his majesty's order in council, of the  
 ‘ 21st day of June last, I do hereby acquaint you, that you  
 ‘ are to enter *noli prosequi* to any prosecution, suit, or ac-  
 ‘ tion, that has been commenced on behalf of the crown,  
 ‘ against any of the patentees of the public offices in this  
 ‘ island, or their deputies, on account of their having ta-  
 ‘ ken such fees, as have by long usage been taken by them  
 ‘ or their predecessors in office, altho' the same should have  
 ‘ exceeded the rates settled by an act of the governor,  
 ‘ council and assembly of this island, entitled an act “ For  
 ‘ “ regulating fees,” passed anno 1711. I am with great  
 ‘ regard,

‘ S I R,

Thomas Gordon Esq;      ‘ Your most humble Servant,  
 attorney general.                      W. H. LITTLETON.’

*Sabbati 2, Die Augusti, 1766.*

‘ A PETITION of the merchants and inhabitants of the  
 ‘ town and parish of Kingston was presented to the  
 ‘ house, and read, setting forth:

‘ THAT the trade and commerce of this island have  
 ‘ long laboured under many inconveniences and distresses.  
 ‘ -----That the many unwarrantable exactions and arbi-  
 ‘ trary embarrassments imposed by the officers of the crown



on all foreign vessels importing bullion, such as their tedious detention at Fort Charles, on their arrival and departure, the fee of one pistole insisted on by the commanding officer at the Fort, a doubloon and often a much larger sum, under the pretence of commission, exacted by the naval officer, have greatly diminished the importation of bullion.

That the high and illegal fees extorted by the officers of his majesty's customs in this island, from the masters of all ships and vessels belonging to British subjects on entry and clearance, are another great and general grievance, and altho' several of the petitioners have attempted to obtain redress in the courts of justice in this island for such illicit practices, they have hitherto been vexatiously baffled and defeated.

That the office fees have been gradually increased from those established by law, to the following sums, which are conformable to tables stuck up in some offices of the customs, viz.

For entering and clearing at the collector's office,	-	-	-	-	-	£. 4---15---0
at the naval office,	-	-	-	-	-	4---15---0
at the comptroller's,	-	-	-	-	-	1---12---6
at the secretary's,	-	-	-	-	-	2---06---3

or accidentally a little more or less,

That the petitioners have been credibly informed, that the aforesaid fees greatly exceed those taken in any other of his majesty's colonies without exception.

That such exorbitant fees and impositions have greatly discouraged all small North America vessels from trading here with lumber and provisions, as such heavy charges render it impracticable for the owners of such small vessels and cargoes to deal in our ports with reasonable advantage, besides when these and other articles are brought hither upon freight, these uncommon port charges furnish the master of every vessel with a just pretence to demand and contract for a rate of freight equally exorbitant, which must proportionably advance the prices of all such commodities to the inhabitants of this island; the petitioners therefore esteem all these impositions, as equal to a very heavy tax, answering no public good, but on the contrary, supporting in affluence a set of oppressors, the patentees in Great Britain, and their dependants.



‘ That the said principals of all patent offices, and of  
 ‘ some offices of the customs residing in Great Britain,  
 ‘ have for many years past, under the protection of mi-  
 ‘ nisterial authority, notoriously advanced the rents and  
 ‘ premiums of their respective offices, and thereby have  
 ‘ confirmed and established, as far as in their power, these  
 ‘ enormous acts committed on all his majesty’s subjects  
 ‘ concerned in the trade of this island, &c.

‘ That many abuses are publicly and justly complained  
 ‘ of in the office of the provost-marshal-general, and that  
 ‘ in particular Peter Ingram Esq; \* late provost-marshal-  
 ‘ general now detains very considerable sums of money,  
 ‘ which have come into his hands by virtue of said office,  
 ‘ belonging to many suitors of the supreme court, in ma-  
 ‘ nifest contempt of the authority and process of the said  
 ‘ court, to the great diminution of the credit of this  
 ‘ island,” &c.

*The above petition was referred to a private committee to  
 enquire into the truth of the allegations thereof, and report  
 the facts with their opinion thereon to the house.*

---

‘ Report of the committee to whom the petition of  
 ‘ Philip Philip Leviston was referred.’

‘ Sabbati 9, Die Augusti, 1766.

‘ Mr. Speaker,

‘ Your committee to whom the petition of Philip Philip  
 ‘ Leviston stands referred, have taken the same into con-  
 ‘ sideration, and having collected all the informations that  
 ‘ they have been able to procure upon the subject-matter  
 ‘ of the said petition, and are of opinion, that the petitioner  
 ‘ hath made out very fully the allegations of his petition,  
 ‘ so far as relates to the exorbitant exactions of the public  
 ‘ officers, the obstruction of public justice, by the unrea-  
 ‘ sonable entering of *noli prosequi* to his informations  
 ‘ against the said public officers, and the great expence he  
 ‘ has incurred in carrying on said prosecutions.

‘ It appears to your committee, that the several fees  
 ‘ mentioned by the petitioner, as having been exacted of  
 ‘ him by the collector, naval officer, and deputy secretary,  
 ‘ are

\* Who was deputy under Nevil Nevil, Esq; secretary to the  
 duke of Bedford, both as lord lieutenant of Ireland and ambas-  
 sador in France, and afterwards was himself the minister of Eng-  
 land at Paris.



' are oppressive and against law. That their pretence for  
 ' exacting such fees upon the foundation of established cus-  
 ' tom, is altogether groundless. That the said exactions,  
 ' so far as your committee have been able to trace them  
 ' from the examination which they have taken in the most  
 ' solemn manner, and which are hereunto annexed, hav-  
 ' ing originally sprung from the first deviations from the  
 ' law of the island, in this respect being perhaps so small,  
 ' as not to deserve opposition, and so modestly demanded  
 ' as not to provoke it. But that the present exactions ex-  
 ' ceed all bounds of former times, even those within our  
 ' own memory, exceed all bounds of justice and reason,  
 ' and are become so intolerable a tax and burthen upon trade;  
 ' as to be a proper subject for the consideration and animad-  
 ' version of this house, especially as these officers seem to  
 ' think themselves so far above law, as to set up their own  
 ' exactions for laws, and appear indeed so far out of the  
 ' reach of the law, as to find protection and shelter under the  
 ' over-grown power and influence of their constituents,  
 ' the patentees, against every legal attempt that has been  
 ' made to bring them to justice.

' It appears to your committee, from the examination  
 ' of Thomas Gordon Esq; late attorney general, as well  
 ' as by a letter from William Henry Littleton Esq; to the  
 ' said Thomas Gordon (a faithful copy of which taken by  
 ' your committee, from the original letter produced to  
 ' them by the said Thomas Gordon, they have hereunto  
 ' annexed) the said *noli prosequi* were entered by him, by  
 ' command of the said Mr. Littleton, and in the said let-  
 ' ter, it was mentioned to be done by his majesty's order  
 ' in council of the 21st day of June, 1765.

' Your committee cannot take upon them to judge  
 ' concerning the absolute legality of entering *noli prose-*  
 ' *qui*, to prosecutions for crimes of so heinous and op-  
 ' pressive a nature; but they cannot help declaring it as  
 ' their opinions, that this exertion of the prerogative must  
 ' have been obtained from the most gracious and best of  
 ' kings, by the grossest misrepresentation of facts, since  
 ' it leaves this class of men at liberty to trample upon the  
 ' laws with impunity, and to continue as they have done  
 ' for some time past, to impose what burthens and taxes  
 ' they think fit upon the commerce of his Majesty's sub-  
 ' jects. And this opinion of your committee is fortified

' and



and confirmed, not only by a thorough knowledge of  
 his Majesty's goodness, in extending his protection to  
 his most distant subjects, and securing to them the en-  
 joyment of their laws, which is their inheritance, but  
 also by a very recent example of his Majesty's goodness  
 in this respect, in a proclamation which he was most  
 graciously pleased to command his said governor to issue  
 here against these very exactions, threatening the exac-  
 tors with his utmost displeasure, and ordering them to  
 be dismissed from their offices, and prosecuted by his  
 attorney-general; the effect of his goodness in this re-  
 spect being defeated, and intirely taken from his people  
 by this command from Mr. Littleton to his attorney-  
 general.

Your committee cannot pretend to form any judge-  
 ment upon that part of the petition which concerns the  
 determination of the judges, with respect to refusing to  
 receive the printed copies of the laws of this island, as  
 evidence in the court. The determination of judges  
 must be presumed to flow from their consciences, and  
 cannot therefore be a subject proper for the examination  
 of your committee.

They must however observe, that an inconvenience,  
 as well as impediment of justice, may frequently arise  
 from there being no printed copy of the laws of the  
 island of sufficient authority to be received as evidence  
 in the courts of justice, and therefore submit this to the  
 house, as a matter very proper to be considered.

It appears to us, that Mr. Liviston has acted in this  
 matter from the most laudable motives, and that with  
 a very becoming spirit of freedom and independency,  
 disdaining to submit to impositions so illegal and oppres-  
 sive; he did oppose himself to them by every legal  
 means in his power, but for so doing, he seems to have  
 rendered himself obnoxious to the united rage and re-  
 sentment of these oppressors, and they are actually  
 at this time prosecuting him for excessive damages, with  
 no other view, as your committee believes, but that of  
 revenge against him, and of deterring others from ex-  
 erting the same laudable spirit.

It is with much real concern your committee ob-  
 serve, that the money wrested from the people by these  
 officers, is now in a way of being most fatally and suc-  
 cess-



‘ cessfully employed in defence of their exactions, and  
 ‘ that these officers combined together, by a sense of their  
 ‘ common danger in such cases, and enriched with the  
 ‘ spoils of their fellow-subjects; thus united among  
 ‘ themselves, and so thoroughly sheltered by the irresist-  
 ‘ able intervention of *noli prosequi*, will, in the end, sub-  
 ‘ due all opposition, and continue to give the law to their  
 ‘ fellow-subjects.’

Ordered, *That the consideration of the said report be referred to the committee of the whole house, appointed to enquire into, and take into consideration the state of the island.*

‘ Mr. Hall, from the committee to whom the petition  
 ‘ of the merchants and inhabitants of the town and pa-  
 ‘ rish of Kingston was referred, reported as follows.

‘ Mr. Speaker,

‘ Your committee appointed to take into consideration  
 ‘ the allegations in the petition of the merchants and inha-  
 ‘ bitants of the town of Kingston, have commanded me  
 ‘ to report, that they have with the greatest diligence  
 ‘ attended to the examination of the witnesses, necessary  
 ‘ for them to report the facts with their opinion thereon  
 ‘ to the house; that your committee observing that the  
 ‘ collector, naval officer, and deputy secretary for King-  
 ‘ ston, were attending to be examined, and being de-  
 ‘ sirous of not giving them the least appearance of delay,  
 ‘ did agree to meet at the house of Hector M’Neal in  
 ‘ the evening, to take their examination, as they could  
 ‘ not light candles in the Speaker’s chamber.

‘ Your committee being met, James Charles Sholto  
 ‘ Douglas, Esq; attended the committee, and the usual  
 ‘ oath to which other examinants were sworn, was ten-  
 ‘ dered to him, to which he objected, that then ano-  
 ‘ ther oath was drawn up in the words following, to  
 ‘ wit;

‘ You shall true answer make to all such questions as  
 ‘ shall be demanded of you by this committee, relative  
 ‘ to the petition of the merchants and inhabitants of the  
 ‘ town and parish of Kingston, according to the best of  
 ‘ your knowledge, information, and belief, saving and  
 ‘ excepting to any question that may tend to affect your-  
 ‘ self,



‘ self, or to draw you into answers, that may cause you  
 ‘ to be impleaded in any court of justice in this island, or  
 ‘ elsewhere.

‘ To which he also objected, and refused to be sworn ;  
 ‘ then he was desired to make any particular objection to  
 ‘ it, or to draw the form of such oath as he might think  
 ‘ best himself; upon which he finally refused to be sworn  
 ‘ at all; Mr. Douglas also said, that he objected to be  
 ‘ sworn, as there had been a late precedent of an officer  
 ‘ of the customs, who had not been sworn till after he  
 ‘ was examined.

‘ Then Mr. Murray was called in and shewed the  
 ‘ usual oath, to which he objected; then he was shewn  
 ‘ the last form of an oath tendered to Mr. Douglas, to  
 ‘ which he also objected, and refused to be sworn, unless  
 ‘ he was first made acquainted with the questions intend-  
 ‘ ed to be asked him, and gave for reason, that there  
 ‘ had been a late precedent of an officer of the customs,  
 ‘ who had not been sworn till after he had been exa-  
 ‘ mined.

‘ Then Mr. Thomas Bullock being called in, and the  
 ‘ last oath tendered to Mr. Collector Douglas, was  
 ‘ shewn to him, and desired to know if he had any ob-  
 ‘ jection to make to his being sworn, replied, that he did  
 ‘ not think the committee had any power to swear him;  
 ‘ that thereupon he was shewn the order of the house for  
 ‘ that purpose, which he read, and then refused to be  
 ‘ sworn; that upon these gentlemen's refusing to be  
 ‘ sworn, the public justice is eluded, the end of the en-  
 ‘ quiry defeated, and your committee disabled from pro-  
 ‘ ceeding further in their examination.

‘ THE HOUSE AGREED TO THE REPORT.’

*Ordered, That James Charles Sholto Douglas, Esquire, collector of his Majesty's customs; Walter Murray, Esquire, naval officer; and Thomas Bullock, Esquire, deputy secretary in the town of Kingston, who are now attending the house, be called to the bar of the house; and be severally examined touching the allegations of the petition of the merchants and inhabitants of the town and parish of Kingston, presented to the house in the most solemn manner.*

S

‘ Then



‘ Then the said James Charles Sholto Douglas, Esq;  
‘ was called to the bar of the house accordingly, and the  
‘ following oath was tendered to him.

‘ You shall true answer make to all such questions as  
‘ shall be demanded of you by the house, relative to the  
‘ petition of the merchants and inhabitants of the town  
‘ and parish of Kingston, according to the best of your  
‘ knowledge, information, and belief, saving and ex-  
‘ cepting to any questions that may tend to affect your-  
‘ self, or to draw you into answers that may cause you  
‘ to be impleaded in any court of justice in this island, or  
‘ elsewhere.

‘ Which oath being by the said James Charles  
Sholto Douglas taken, he was asked,

Q. ‘ What is the annual income of your office, arising  
‘ from all the fees and other emoluments of your office,  
‘ which you receive at this time.

A. ‘ That he cannot answer that question, because he  
‘ apprehends, that the answering it may materially affect  
‘ his interest, and that he makes this answer agreeable  
‘ to the oath he has taken.

Ja. Ch. Sh. Douglas.’

*Ordered, That the said James Charles Sholto Douglas  
be discharged from any further attendance upon this house.*

‘ Then the said Walter Murray was called to the bar  
‘ of the house, and the same oath which was tendered to  
‘ the said James Charles Sholto Douglas was tendered to,  
‘ and taken by, the said Walter Murray; and he was  
‘ asked,

Q. ‘ What is the annual income of your office arising  
‘ from all the fees, and other emoluments of your office,  
‘ which you receive at this time?

A. ‘ That he has not been long enough in office to know  
‘ the annual income of it.

Q. ‘ What has your office yielded you since the time of  
‘ your being appointed thereto?

A. ‘ That he cannot answer that question, because he  
‘ apprehends, the answering of it may affect himself,  
‘ agreeable to the oath he has taken.

Walter Murray.’

Ordered



Ordered, *That Walter Murray be discharged from any further attendance on this house.*

‘ Then the said Thomas Bullock was called to the bar of the house, and the same oath which was tendered to the said James Charles Sholto Douglas, and Walter Murray, was tendered to, and taken by, the said Thomas Bullock; and he was asked,

Q. ‘ What has your office yielded you, since the term of your being appointed thereto?

A. ‘ That he cannot answer that question, because he is to receive whatever Mr. Hay pleases to give him, for taking care of his office.”

Q. ‘ What has your office yielded, since the time of your being appointed thereto?

A. ‘ He thinks the answering that question, may greatly affect himself, therefore, he declines answering it, agreeable to the oath he hath taken.

‘ T. BULLOCK.’

Ordered, *That the said Thomas Bullock be discharged from any further attendance on this house.*

‘ *Veneris, 15 die, Augusti, 1766.*

‘ A message from his honour the lieutenant governor, by his secretary, together with a letter from Walter Murray, naval officer:

‘ Mr. Speaker,

‘ I am commanded by his honour the lieutenant governor, to lay before the house, a letter from Mr. Murray, the naval officer, in consequence of their message to his honour of the 13th instant.

‘ Sir,

August 14, 1766.

‘ I received the favour of your letter of yesterday, and beg leave to inform you, that as foreign vessels were not, by act of parliament, admitted to an entry, the naval officer never kept a list of them; I therefore have it not in my power, to obey the governor’s order, by laying before the house of assembly, the number of



“ such vessels as have come here, since the determination  
“ of last war; of this you’ll be pleased to acquaint him.

“ I am, Sir,

“ Your most obedient servant,

“ WALTER MURRAY.”

“ Richard Reynoll, Esq.

Ordered, *That the said message and letter be referred to  
the committee, to whom the petition of the merchants and in-  
habitants of the town and the parish of Kingston stands re-  
ferred.”*

“ *Mercurii, 20 die, Augusti, 1766.*

“ A message from his honour the lieutenant governor,  
“ by the provost marshal, informing the house, that his  
“ honour, in his majesty’s name, recommended the atten-  
“ dance of the house immediately in the council-chamber,  
“ whereupon Mr. Speaker and the house attending, his  
“ honour was pleased to make the following speech:”

“ Gentlemen of the council, Mr. Speaker, and  
“ gentlemen of the assembly,

“ The proceedings of the house on Saturday last, so  
“ very injurious to the rights and prerogative of his ma-  
“ jesty’s crown, make it indispensably my duty, to put  
“ you under a short prorogation.

“ I do therefore, in his Majesty’s name, by and with  
“ the advice of his majesty’s council, prorogue this as-  
“ sembly to Tuesday the twenty-first day of August in-  
“ stant, and this assembly is prorogued accordingly.”

The 21st of August the house met conformable to the  
prorogation; but did not resume the enquiry into the  
public offices.

All this notwithstanding, in 1767, Mr. Samuel Jebb brought  
actions against several public officers, for demanding and  
taking exorbitant fees, and obtained a judgement for the  
penalty, against Walrond Fearon, Esq. the collector of  
the customs, and a suspension must have followed, but  
for the appointment of Zachariah Bayly, Esq. from home,  
arriving before the suspension could take place, since  
which nothing has been done, nor any redress obtained.

REPORT



*Mercurii, 18 die, Novembris, 1767.*

§ Mr. Speaker,

‘ Your committee appointed to inspect into the state  
 ‘ and condition of the several public offices in this  
 ‘ island, &c. &c.

‘ Your committee have also examined the records in  
 ‘ the office of the clerk of the supreme court, and do  
 ‘ find that office to be carried on with great care, the re-  
 ‘ cords duly entered up, and that the present gentleman,  
 ‘ who has the conduct of that office, has also provided  
 ‘ books, wherein he carefully enters all writs of view,  
 ‘ with their returns; also all proceedings had in partition,  
 ‘ and other matters, which are of great use to the public,  
 ‘ and greatly tend to the safety of the suitors of that  
 ‘ court, and particularly so to the holders of lands in this  
 ‘ island, &c. &c.’

F I N I S.

## CORRESPONDENCE, &amp;c.

THE following correspondence, with which there cannot be  
 a doubt the ministry were acquainted, happening at the  
 very time that Mr. Vaughan was threatned with a prosecution,  
 is one proof among many others, that he would not, even at  
 the most critical juncture, suppress his sentiments, however  
 repugnant to those in power, and that he dared in open day  
 to declare and avow them.

As this most probably contributed not a little to the perse-  
 cution raised against him, and the transaction having been  
 greatly misrepresented, and much to Mr. Vaughan's preju-  
 dice, no apology for its publication can be requisite.

SAML. VAUGHAN Esq;

S I R,

As general Paoli is now arrived in London, I shall be hap-  
 py in presenting to him, one who so generously exerted him-  
 self for the brave Corsicans, and whenever you let me know,  
 I will be ready to attend you. I am,

22d Sept. 1769.

S I R,

I live at Mr Renaud's, in  
 Bond-street, next door to  
 the bishop of London's,

Your most obedient

humble Servant,

JAMES BOSWELL.



JAMES BOSWELL, Esq;

S I R,

*Mincing-lane, 26 Sept. 1769.*

I CALLED twice at Mr. Dilly's on Saturday last, in expectation of seeing you. I this moment received from that gentleman, your favour of 22d instant, and am obliged for your offer, but much as I have admired and revered the late distressed patriot, I equally despise a vain-glorious sycophant. I am,

S I R,

Your most obedient Servant,

SAM. VAUGHAN.

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*The 29th September, Mr. Vaughan received the following per Mr. Frederick, son to the late king Theodore.*

Old Bond-street, ce 29me 7ber, 1769.

*Le general de Paoli fait bien ses compliments à monsieur Vaughan, il est fâché de n'avoir pas eû l'occasion jusqu'à présent de lui témoigner sa reconnoissance, pour les genereux soins qu'il s'est donné pour le soutien de la liberté de sa patrie, et a une grande envie lui marquer de vive voix.*

## TRANSLATION.

Old Bond-street, 29th of Sept. 1769.

GENERAL Paoli presents his best compliments to Mr. Vaughan, is sorry he has not yet had an opportunity to assure him of his gratitude for the generous pains that he has taken, for supporting the liberty of his country, and has an extreme desire to testify that gratitude in person.

## Mr. VAUGHAN's Answer.

Mr. VAUGHAN presents his respectful compliments to general Paoli, and would have answered his invitation of the 29th ult. before, but that he was in the country. Before the general's arrival in England, Mr. Vaughan, in the presence of two gentlemen, requested Mr. Boswell would recommend it to the general, upon his arrival, to wait upon the great officers of state; as a compliment due to office, not to men, *who had acted with respect to the brave Corsicans unworthy their stations.*—Mr. Vaughan having been informed that the contents of his letter to Mr. Boswell has been communicated to his excellency, thinks it incumbent upon him, to assign his reasons, for passing so harsh a censure; *viz.*—he was informed of the general's negotiation with Sir Joseph York at the Hague;—with the general's having lately purchased an estate in Switzerland;—that his estate in Corsica had not been molested by the French—with the private manner in which he came from Holland to London—with his concealing his abode for above



a week after his arrival in London, (which prevented Mr. Vaughan from paying his immediate compliments to the general) during which time, the general had been in private treaty with the ministry separately;—that the general had assigned for reason of his conduct, the having been informed that the opposition were composed of the dregs and refuse of the people:—these, with many other reasons, induced Mr. Vaughan to conclude that the general had been brought over by the ministry, and had deserted the noble cause of liberty which he had with so much ability, unparalleled perseverance, and honour to himself, for such a length of time supported against the formidable power of the Grand Monarque. Yet would Mr. Vaughan be extremely happy to find cause to alter his opinion, and that the general still preserves his integrity: is animated with the same divine spirit, and determined to stand forth, as heretofore, the defender of the *unalienable rights of mankind*. In this case, Mr. Vaughan will take the highest satisfaction, in retracting his opinion, and in immediately paying his compliments to his excellency in person.

Mincing Lane,  
2d Octr. 1799.

SAM. VAUGHAN, Esq;  
S I R,

You may believe I was not a little surprized with your letter to me. How could you, who so lately appeared the zealous friend of the brave Corsicans, and of their illustrious chief, all at once take up such unworthy suspicions? Might not you have considered, that the general, whose character is so fully established,—who has been so many years at the head of a nation, and had so much to do with courts, knew better what was the conduct most proper to promote the interests of his country, than you could do: and ought you not to have had confidence in him?

His excellency has received your card, in which you explain yourself. He sees your motives, your manner of thinking, and how you have been misled, and therefore heartily excuses you; and if you will wait upon him, he will with pleasure set you right, and convince you that your suspicions are without any foundation whatever. I am,

S I R,

Old Bond-street,  
5th Octr. 1769.

Your most obedient  
humble Servant,  
JAMES BOSWELL.



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JAMES BOSWELL Esq;      Mincing Lane, 6th Octr. 1769.  
S I R,

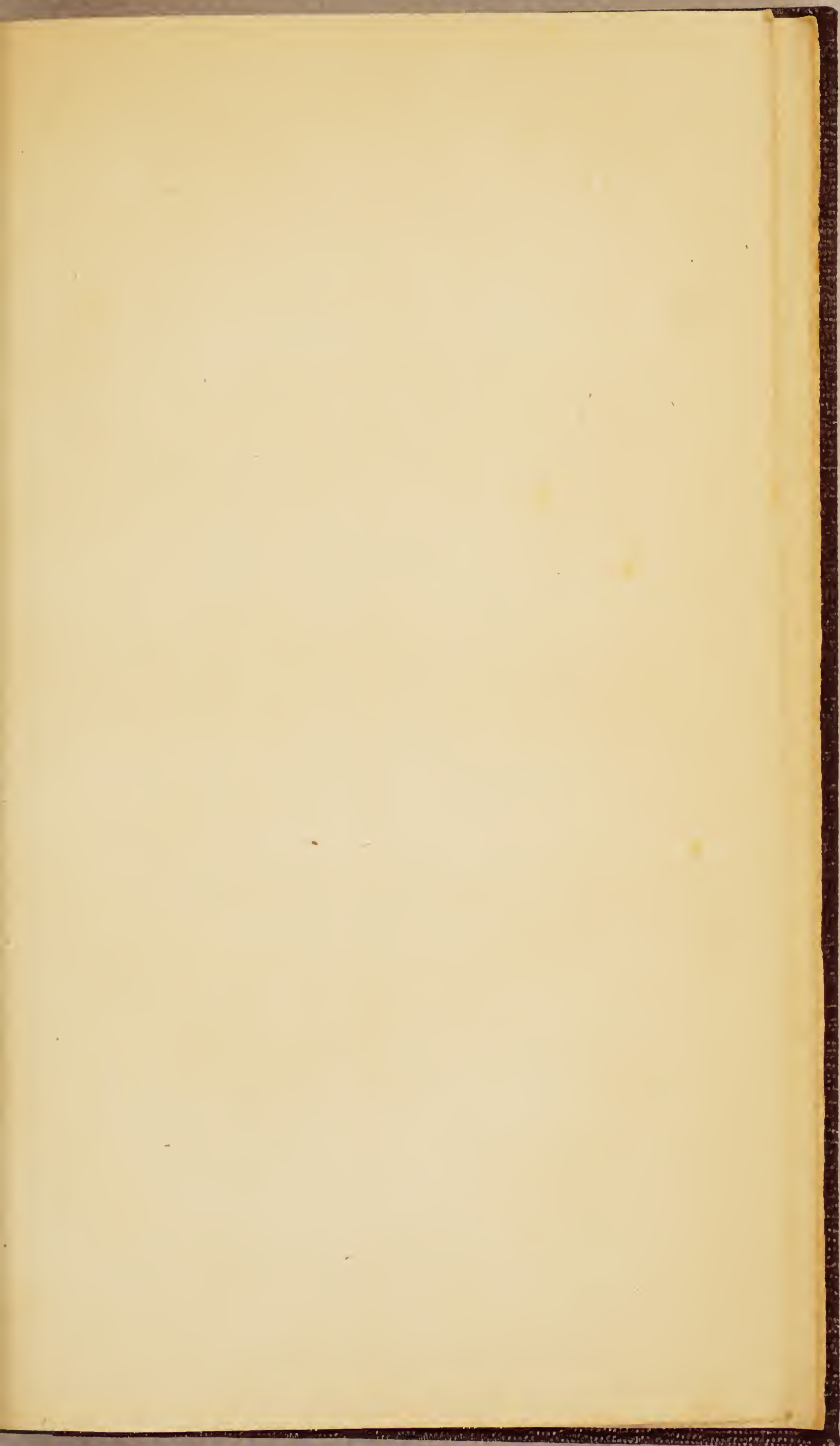
I THIS instant received your favour of yesterday, and am pleased to find that the general and yourself are of opinion appearances gave cause for my conjectures; the clearing up the objections, will give me a higher satisfaction than you can conceive; when that is done, I will immediately wait upon the general. Had I had access to him upon his arrival, my advice would have been, to have joined no party whatever; it being out of his province, nor could he as a foreigner have served any party. His object was to have preserved an uniformity, consistency, and dignity of character. I do confess it is my opinion, that had the *present ministry* offered an effectual support for the recovery of Corsica, the general as a patriot could not have accepted their assistance with propriety, tho' when the good of a people is the object, a man may be induced to suffer his personal honour to be sullied for the obtaining so great an end, but of this there was not the least danger. Yet I do not despair of seeing an *administration* who will perceive the importance of Corsica to this kingdom, and from nobler considerations, boldly demand, recover, and effectually maintain their rights, as stipulated in the treaty of Aix la Chapelle, wherein it is declared, *That all things shall remain in Italy in the condition they were in before the war*, as that only can secure the balance of power in the Mediterranean. I am,

S I R,  
Your most obedient  
humble Servant,  
SAM. VAUGHAN.

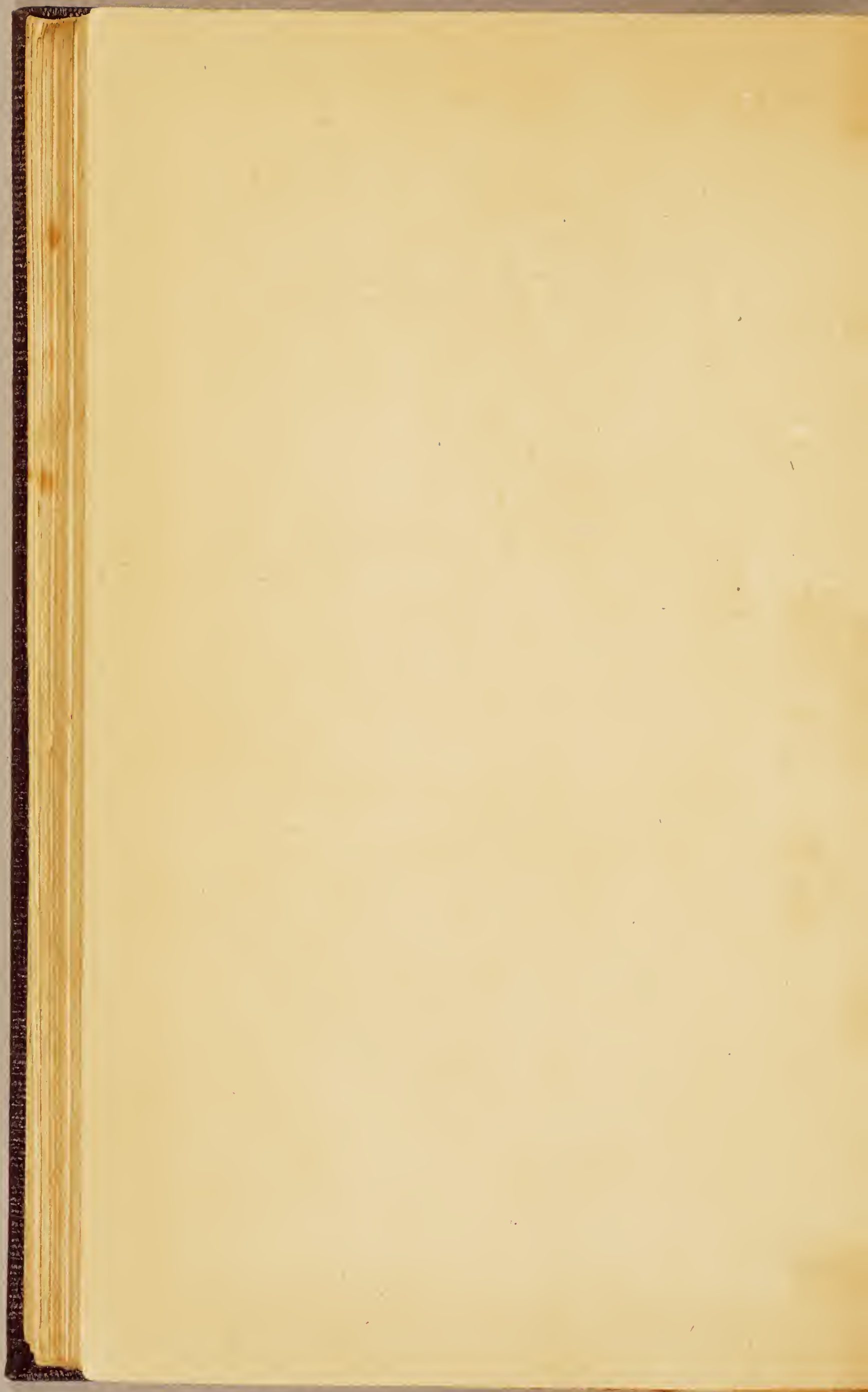
Here ended the Correspondence.

*It may be asked, whether money was not at different times privately sent to general Paoli in Corsica? also, whether since his arrival in England, one of the confidants employed, has not been presented to the living of Greenwich? another confidant likewise obtaining the promise of a provision? and, whether the general himself is not allowed 1000l. per annum, for his important services?*











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